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**KANE LAW FIRM**

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Attorneys for Defendants  
VXN GROUP LLC; STRIKE 3 HOLDINGS, LLC;  
GENERAL MEDIA SYSTEMS, LLC; and  
MIKE MILLER

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

MACKENZIE ANNE THOMA, a.k.a.  
KENZIE ANNE, an individual and on  
behalf of all others similarly situated,

Plaintiff,

v.

VXN GROUP LLC, a Delaware  
limited liability company; STRIKE 3  
HOLDINGS, LLC, a Delaware limited  
liability company; GENERAL MEDIA  
SYSTEMS, LLC, a Delaware limited  
liability company; MIKE MILLER, an  
individual; and DOES 1 to 100,  
inclusive,

Defendants.

Case No. **2:23-cv-04901 WLH (AGRx)**

**DECLARATION OF BRAD S. KANE  
IN SUPPORT OF DEFENDANTS'  
MOTION TO DISMISS**

Date: July 28, 2023  
Time: 1:00 pm or later  
Courtroom: 9B

*[Filed concurrently with Defendants'  
Notice of Motion and Motion to Dismiss  
Plaintiff's Complaint; and [Proposed]  
Order]*

Complaint Filed: April 20, 2023  
Removed: June 22, 2023

**DECLARATION OF BRAD S. KANE IN SUPPORT OF DEFENDANTS'  
MOTION TO DISMISS**

1 I, Brad S. Kane, hereby declare as follows:

2 1. I am an attorney licensed to practice law in the State of California  
3 since 1990, the State of Alaska since 1991 and Washington State since 2003. I am  
4 the owner of the Kane Law Firm (“KLF”), and counsel for Defendants VXN Group  
5 LLC (“VXN”), Strike 3 Holdings, LLC (“Strike 3”), General Media Systems, LLC  
6 (“GMS”), and Mike Miller (“Miller”) (collectively, “Defendants”). I am  
7 personally familiar with, and, if called upon, could and would testify to the facts  
8 contained herein from my personal knowledge.

9 2. On June 21, 2023, I filed Defendants’ Notice of Removal to remove  
10 this action from state court to federal court.

11 3. On June 23, 2023, I emailed Plaintiff’s counsel to arrange a meet and  
12 confer conference as soon as possible under Local Rule 7-3. The reason for the  
13 delay between filing the Notice of Removal and requesting a meet and confer  
14 conference was because I was ill, and I am the primary caregiver for my 92-year-  
15 old father, who moved into my backhouse in March 2023. As such, the parties’  
16 counsel were unable to arrange a videoconference the full 7 days before the filing  
17 of this motion in accordance with Local Rule 7-3.

18 4. On June 27, 2023, myself, my associate Eric Clopper, and Plaintiff’s  
19 counsel, Sarah Cohen, thoroughly discussed the substance and potential resolution  
20 of Defendants’ motion to dismiss by videoconference for over one hour. On several  
21 occasions during our videoconference, I informed Ms. Cohen that Defendants  
22 would assent to granting Plaintiff additional time to amend her Complaint to  
23 incorporate allegations that are specific to Defendants (as opposed to filing Bibiyan  
24 Law Group, P.C.’s (“Bibiyan”) boilerplate Complaints, as shown in the exhibits  
25 below). I also provided Ms. Cohen with multiple sections of the legal argument for  
26 her consideration. Ms. Cohen declined the offer.

27 5. Attached hereto as **Exhibit 1** is a true and correct copy of Bibiyan’s  
28

KANE LAW FIRM  
1154 S. Crescent Heights Blvd.  
Los Angeles, CA 90035

1 *Juarez v. Calmet Services, Inc., et al.* Complaint filed in Los Angeles Superior  
2 Court (“LASC”) on September 13, 2021, and then removed to the Central District  
3 for the District of California.

4 6. Attached hereto as **Exhibit 2** is a true and correct copy of Bibiyan’s  
5 *Rodriguez v. Raising Cane’s USA, LLC, et al.* Complaint filed in LASC on August  
6 26, 2022, and then removed to the Central District for the District of California.

7 7. Attached hereto as **Exhibit 3** is a true and correct copy of Bibiyan’s  
8 *Rivero v. Autozoners, LLC, et al.* Complaint filed in LASC on March 30, 2023, and  
9 then removed to the Central District for the District of California.

10 8. Attached hereto as **Exhibit 4** is true and correct copy of Bibiyan’s  
11 *Men Chan v. Panera, LLC, et al.* Complaint filed in LASC on April 21, 2023, and  
12 then removed to the Central District for the District of California.

13 9. Attached hereto as **Exhibit 5** is a true and correct copy of the June 28,  
14 2023 CM/ECF search results for the appearance of “David D. Bibiyan,” which is  
15 aids the Court in collecting other Bibiyan filings to ascertain whether pleading  
16 vague boilerplate complaints is a pattern and practice of the Bibiyan Law Group,  
17 P.C.

18 10. Attached hereto as **Exhibit 6** is true and correct copy of the operative  
19 Complaint in this action that was filed on April 20, 2023, in the Superior Court of  
20 California for the County of Los Angeles, entitled *Mackenzie Anne Thoma, a.k.a.*  
21 *Kenzie Anne v. VXN Group LLC; Strike 3 Holdings, LLC; General Media Systems,*  
22 *LLC; Mike Miller; and DOES 1 through 100, inclusive*, Case No. 23STCV08761.

23  
24 I declare under penalty of perjury that the foregoing is true and  
25 correct. Executed on June 28, 2023 at Los Angeles, California.

26 /s/ Brad S. Kane

27 Brad S. Kane

Exhibit 1

**FILED**  
Superior Court of California  
County of Los Angeles

**SEP 13 2021**

Sherri R. Carter, Executive Officer/Clerk of Court  
By S. DREW Deputy

**BIBIYAN LAW GROUP, P.C.**  
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Attorneys for Plaintiff, GENARO JUAREZ and  
on behalf of himself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

GENARO JUAREZ, an individual and on  
behalf of all others similarly situated,

Plaintiffs,

v.

CALMET SERVICES, INC., a California  
corporation; CALMET PROPERTIES, LLC, a  
California limited liability company; and  
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: **21STCV33668**

**CLASS ACTION COMPLAINT FOR:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO TIMELY PAY WAGES;
8. VIOLATION OF LABOR CODE § 227.3;  
and
9. UNFAIR COMPETITION.

**DEMAND FOR JURY TRIAL**

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff GENARO JUAREZ ("Plaintiff"), on behalf of Plaintiff and all others similarly situated, and alleges as follows:

**GENERAL ALLEGATIONS**

**INTRODUCTION**

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against CALMET SERVICES, INC., a California corporation and any of its respective subsidiaries or affiliated companies within the State of California ("CALMET SERVICES"); and CALMET PROPERTIES, LLC, a California limited liability company and any of its respective subsidiaries or affiliated companies within the State of California ("CALMET PROPERTIES" and CALMET SERVICES, with DOES 1 through 100, as further defined below, "Defendants") on behalf of Plaintiff and all other current and former non-exempt California employees employed by or formerly employed by Defendants ("Class Members").

**PARTIES**

**A. Plaintiff**

2. Plaintiff GENARO JUAREZ is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants employed Plaintiff GENARO JUAREZ as a non-exempt employee, with duties that included, but were not limited to, driving and collecting waste and recycling. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff GENARO JUAREZ worked for Defendants from approximately June of 1985 through approximately September of 2020.

3.

**B. Defendants**

4. Plaintiff is informed and believes, and based thereon alleges, that defendant CALMET SERVICES is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of the laws of the State of California and doing business in the County of Los Angeles, State of California.

5. Plaintiff is informed and believes, and based thereon alleges, that defendant CALMET PROPERTIES is, and at all times relevant hereto was, a limited liability company

1 organized and existing under and by virtue of the laws of the State of California and doing business  
2 in the County of Los Angeles, State of California.

3 6. The true names and capacities, whether individual, corporate, associate, or otherwise,  
4 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,  
5 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.  
6 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated  
7 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.  
8 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of  
9 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is  
10 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent  
11 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or  
12 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the  
13 other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall  
14 include CALMET SERVICES, CALMET PROPERTIES and any of their parent, subsidiary, or  
15 affiliated companies within the State of California, as well as DOES 1 through 100 identified herein.

16 **JOINT LIABILITY ALLEGATIONS**

17 7. Plaintiff is informed and believes and based thereon alleges that all the times  
18 mentioned herein, each of the Defendants was the agent, principal, employee, employer,  
19 representative, joint venture or co-conspirator of each of the other defendants, either actually or  
20 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,  
21 employment, joint venture, and conspiracy.

22 8. All of the acts and conduct described herein of each and every corporate defendant  
23 was duly authorized, ordered, and directed by the respective and collective defendant corporate  
24 employers, and the officers and management-level employees of said corporate employers. In  
25 addition thereto, said corporate employers participated in the aforementioned acts and conduct of  
26 their said employees, agents, and representatives, and each of them; and upon completion of the  
27 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant  
28 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,

1 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the  
2 aforementioned corporate employees, agents and representatives.

3 9. As a result of the aforementioned facts, Plaintiff is informed and believes, and based  
4 thereon alleges that Defendants, and each of them, are joint employers.

5 **JURISDICTION**

6 10. Jurisdiction exists in the Superior Court of the State of California pursuant to Code  
7 of Civil Procedure section 410.10.

8 11. Venue is proper in Los Angeles County, California pursuant to Code of Civil  
9 Procedure sections 392, et seq. because, among other things, Los Angeles County is where the  
10 causes of action complained of herein arose; the county in which the employment relationship  
11 began; the county in which performance of the employment contract, or part of it, between Plaintiff  
12 and Defendants was due to be performed; the county in which the employment contract, or part of  
13 it, between Plaintiff and Defendants was actually performed; and the county in which Defendants,  
14 or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff  
15 and Class Members in Los Angeles County, and because Defendants employ numerous Class  
16 Members in Los Angeles County.

17 **FACTUAL BACKGROUND**

18 12. For at least four (4) years prior to the filing of this action and continuing to the  
19 present, Defendants have, at times, failed to pay overtime wages to Plaintiff and Class Members, or  
20 some of them, in violation of California state wage and hour laws as a result of, without limitation,  
21 Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per week, and  
22 seven consecutive work days in a work week without being properly compensated for hours worked  
23 in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours  
24 worked on the seventh consecutive work day in a work week by, among other things, failing to  
25 accurately track and/or pay for all hours actually worked at the proper overtime rate of pay;  
26 engaging, suffering, or permitting employees to work off the clock, including, without limitation,  
27 by requiring employees: to come early to work without being able to clock in for all that time; and  
28 to suffer under Defendants' control due to long lines for clocking in, to clock out for meal periods

1 and continue working, to drive off the clock, and/or go through temperature checks off the clock, to  
2 the detriment of Plaintiff and Class Members.

3 13. For at least four (4) years prior to the filing of this Action and continuing to the  
4 present, Defendants have, at times, failed to pay minimum wages to Plaintiff and Class Members,  
5 or some of them, in violation of California state wage and hour laws as a result of, among other  
6 things, at times, failing to accurately track and/or pay for all hours actually worked at the proper  
7 overtime rate of pay; engaging, suffering, or permitting employees to work off the clock, including,  
8 without limitation, by requiring employees: to come early to work without being able to clock in for  
9 all that time; and to suffer under Defendants' control due to long lines for clocking in, to clock out  
10 for meal periods and continue working, to drive off the clock, and/or go through temperature checks  
11 off the clock, to the detriment of Plaintiff and Class Members.

12 14. For at least four (4) years prior to the filing of this Action and continuing to the  
13 present, Defendants have, at times, failed to provide Plaintiff and Class Members, or some of them,  
14 full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than  
15 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on  
16 which they worked in excess of ten (10) hours in a work day, and failing to provide compensation  
17 for such unprovided meal periods as required by California wage and hour laws.

18 15. For at least four (4) years prior to the filing of this action and continuing to the  
19 present, Defendants have, at times, failed to authorize and permit Plaintiff and Class Members, or  
20 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major  
21 fraction thereof and failed to provide compensation for such unprovided rest periods as required by  
22 California wage and hour laws.

23 16. For at least three (3) years prior to the filing of this action and continuing to the  
24 present, Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the  
25 full amount of their wages owed to them upon termination and/or resignation as required by Labor  
26 Code sections 201 and 202, including for, without limitation, failing to pay overtime wages,  
27 minimum wages, premium wages, and vacation pay pursuant to Labor Code section 227.3.

28 17. For at least one (1) year prior to the filing of this Action and continuing to the present,

1 Defendants have, at times, failed to furnish Plaintiffs and Class Members, or some of them, with  
2 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages  
3 earned; all applicable hourly rates in effect during the pay period and the corresponding number of  
4 hours worked at each hourly rate; the name and address of the legal entity that is the employer; and  
5 other such information as required by Labor Code section 226, subdivision (a). As a result thereof,  
6 Defendants have further failed to furnish employees with an accurate calculation of gross and gross  
7 wages earned, as well as gross and net wages paid.

8 18. For at least one (1) year prior to the filing of this action and continuing to the present,  
9 Defendants have, at times, failed to pay Plaintiffs and Class Members, or some of them, the full  
10 amount of their wages for labor performed in a timely fashion as required under Labor Code section  
11 204.

12 19. For at least four (4) years prior to the filing of this action and continuing to the  
13 present, Defendants have had a consistent policy of failing to provide Plaintiff and similarly situated  
14 employees or former employees within the State of California with compensation at their final rate  
15 of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

16 20. Plaintiffs, on their own behalf and on behalf of Class Members, brings this action  
17 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7,  
18 227.3, 510, 512, 1194, 1194.2, 1197, *et al.*, and California Code of Regulations, Title 8, section  
19 11040, seeking overtime wages, minimum wages, payment of premium wages for missed meal and  
20 rest periods, failure to pay timely wages, waiting time penalties, wage statement penalties, failing  
21 to pay vested vacation time at the proper rate of pay, other such provisions of California law, and  
22 reasonable attorneys' fees and costs.

23 21. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, pursuant to  
24 Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s)  
25 prohibiting Defendants from further violating the Labor Code and requiring the establishment of  
26 appropriate and effective means to prevent further violations, as well as all monies owed but  
27 withheld and retained by Defendants to which Plaintiff and Class Members are entitled, as well as  
28 restitution of amounts owed.

**CLASS ACTION ALLEGATIONS**

22. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current and former non-exempt employees of Defendants within the State of California at any time commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice of the class action is provided to the class (collectively referred to as "Class Members").

23. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b) to amend or modify the class description with greater specificity, further divide the defined class into subclasses, and to further specify or limit the issues for which certification is sought.

24. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

**A. Numerosity**

25. The potential Class Members as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined yet, Plaintiff is informed and believes that there are over seventy-five (75) Class Members employed by Defendants within the State of California.

26. Accounting for employee turnover during the relevant periods necessarily increases this number. Plaintiff alleges Defendants' employment records would provide information as to the number and location of all Class Members. Joinder of all members of the proposed Class is not practicable.

**B. Commonality**

27. There are questions of law and fact common to Class Members. These common questions include, but are not limited to:

A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours worked at a proper overtime rate of pay?

B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay for all other time worked at the employee's regular rate of pay and a rate of pay that

- 1 is greater than the applicable minimum wage?
- 2 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
- 3 Class Members to take compliant meal periods?
- 4 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
- 5 with additional wages for missed or interrupted meal periods?
- 6 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
- 7 Class Members to take compliant rest periods?
- 8 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
- 9 with additional wages for missed rest periods?
- 10 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
- 11 Members upon termination or resignation all wages earned?
- 12 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
- 13 section 203?
- 14 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
- 15 Class Members with accurate wage statements?
- 16 J. Did Defendants fail to pay Class Members in a timely fashion as required under
- 17 Labor Code section 204?
- 18 K. Did Defendants violate Labor Code section 227.3 by not providing Class Members
- 19 with compensation at their final rate of pay for vested paid vacation time.
- 20 L. Did Defendants violate the Unfair Competition Law, Business and Professions Code
- 21 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 22 M. Are Class Members entitled to restitution of wages under Business and Professions
- 23 Code section 17203?
- 24 N. Are Class Members entitled to costs and attorneys' fees?
- 25 O. Are Class Members entitled to interest?

26 C. Typicality

- 27 28. The claims of Plaintiff herein alleged are typical of those claims which could be
- 28 alleged by any Class Members, and the relief sought is typical of the relief which would be sought

1 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and  
2 damages arising out of and caused by Defendants' common course of conduct in violation of laws  
3 and regulations that have the force and effect of law and statutes as alleged herein.

4 **D. Adequacy of Representation**

5 29. Plaintiff will fairly and adequately represent and protect the interest of Class  
6 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and  
7 hour class actions.

8 **E. Superiority of Class Action**

9 30. A class action is superior to other available means for the fair and efficient  
10 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and  
11 questions of law and fact common to Class Members predominate over any questions affecting only  
12 individual Class Members. Class Members, as further described therein, have been damaged and  
13 are entitled to recovery by reason of Defendants' policies and/or practices that have resulted in the  
14 violation of the Labor Code at times, as set out herein.

15 31. Class action treatment will allow Class Members to litigate their claims in a manner  
16 that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of  
17 any difficulties that are likely to be encountered in the management of this action that would  
18 preclude its maintenance as a class action.

19 **FIRST CAUSE OF ACTION**

20 **(Failure to Pay Overtime Wages – Against All Defendants)**

21 32. Plaintiff realleges and incorporates by reference all of the allegations contained in  
22 the preceding paragraphs as though fully set forth hereat.

23 33. At all relevant times, Plaintiff and Class Members were employees or former  
24 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable  
25 Wage Orders.

26 34. At all times relevant to this Complaint, Labor Code section 510 was in effect and  
27 provided: "(a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours in  
28 one workday and any work in excess of forty hours in any one workweek . . . shall be compensated

1 at the rate of no less than one and one-half times the regular rate of pay for an employee.”

2 35. At all times relevant to this Complaint, Labor Code section 510 further provided that  
3 “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice  
4 the regular rate of pay for an employee. In addition, any work in excess of eight hours on any  
5 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of  
6 pay.”

7 36. Four (4) years prior to the filing of the Complaint in this Action through the present,  
8 Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more  
9 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)  
10 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a  
11 result of, including but not limited to, failing to accurately track and/or pay for all hours actually  
12 worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to work off  
13 the clock, including, without limitation, by requiring employees: to come early to work without  
14 being able to clock in for all that time; and to suffer under Defendants’ control due to long lines for  
15 clocking in, to clock out for meal periods and continue working, to drive off the clock, and/or go  
16 through temperature checks off the clock, to the detriment of Plaintiff and Class Members.

17 37. Accordingly, by requiring Plaintiff and Class Members to, at times, work greater  
18 than eight (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays  
19 without properly compensating overtime wages at the proper overtime rate of pay, Defendants, on  
20 occasion, willfully violated the provisions of the Labor Code, among others, sections 510, 1194, and  
21 applicable IWC Wage Orders, and California law.

22 38. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have  
23 been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery,  
24 plus interest and penalties thereon, attorneys’ fees and costs, pursuant to Labor Code section 1194  
25 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

26 / / /

27 / / /

28 / / /

**SECOND CAUSE OF ACTION**

**(Failure to Pay Minimum Wages – Against All Defendants)**

39. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

40. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage Orders.

41. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and Class Members were entitled to receive minimum wages for all hours worked or otherwise under Defendants' control.

42. For four (4) years prior to the filing of the Complaint in this Action through the present, Defendants failed, at times, to accurately track and/or pay for all hours actually worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work without being able to clock in for all that time; and to suffer under Defendants' control due to long lines for clocking in, to clock out for meal periods and continue working, to drive off the clock, and/or go through temperature checks off the clock, to the detriment of Plaintiff and Class Members.

43. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages for all hours worked or otherwise due.

44. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated damages, reasonable attorneys' fees and costs of suit.

**THIRD CAUSE OF ACTION**

**(Failure to Provide Meal Periods – Against All Defendants)**

45. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

46. At all relevant times, Plaintiff and Class Members were employees or former

1 employees of Defendants covered by Labor Code section 512 and applicable Wage Orders.

2 47. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall  
3 employ an employee for a work period of more than five (5) hours without a timely meal break of  
4 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.  
5 Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours  
6 per day without providing the employee with a second timely meal period of not less than thirty (30)  
7 minutes in which the employee is relieved of all of his or her duties.

8 48. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee  
9 with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission,  
10 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate  
11 of compensation for each workday that the meal period is not provided.

12 49. For four (4) years prior to the filing of the Complaint in this Action through the  
13 present, Plaintiff and Class Members were, at times, not provided complete, timely 30-minute, duty-  
14 free uninterrupted meal periods every five hours of work without waiving the right to take them, as  
15 permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the  
16 Class Member's regular rate of compensation on the occasions that Class Members were not  
17 provided compliant meal periods.

18 50. By their failure to provide Plaintiff and Class Members compliant meal periods as  
19 contemplated by Labor Code section 512, among other California authorities, and failing, at times,  
20 to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully  
21 violated the provisions of Labor Code section 512 and applicable Wage Orders.

22 51. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have  
23 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay  
24 owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

25 52. Plaintiff and Class Members are entitled to recover the full amount of their unpaid  
26 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus  
27 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,  
28 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

**FOURTH CAUSE OF ACTION**

**(Failure to Provide Rest Periods – Against All Defendants)**

53. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

54. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by applicable Wage Orders.

55. California law and applicable Wage Orders require that employers “authorize and permit” employees to take ten (10) minute rest periods in about the middle of each four (4) hour work period “or major fraction thereof.” Accordingly, employees who work shifts of three and-a-half (3 ½ ) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes of paid rest period, and employees who work shifts of more than ten (10) hours must be provided thirty (30) minutes of paid rest period.

56. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.

57. For four (4) years prior to the filing of the Complaint in this Action through the present, Plaintiff and Class Members were, at times, not authorized or permitted to take complete, timely 30-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class Member’s regular rate of compensation on the occasions that Class Members were not authorized or permitted to take compliant rest periods.

58. By their failure, at times, to authorize and permit Plaintiff and Class Members to take rest periods contemplated by California law, and one (1) additional hour of pay at the employee’s regular rate of compensation for such unprovided rest periods, as alleged above, Defendants willfully violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

59. As a result of Defendants’ unlawful conduct, Plaintiff and Class Members have

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1 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay  
2 owed for rest periods that they were not authorized or permitted to take.

3 60. Plaintiff and Class Members are entitled to recover the full amount of their unpaid  
4 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus  
5 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,  
6 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

7  
8 **FIFTH CAUSE OF ACTION**

9 **(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

10 61. Plaintiff realleges and incorporates by reference all of the allegations contained in  
11 the preceding paragraphs as though fully set forth hereat.

12 62. At all relevant times, Plaintiff and Class Members were employees or former  
13 employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable  
14 Wage Orders.

15 63. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were  
16 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.  
17 Discharged Class Members were entitled to payment of all wages earned and unpaid prior to  
18 discharge immediately upon termination. Class Members who resigned were entitled to payment  
19 of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation  
20 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and  
21 unpaid at the time of resignation.

22 64. Plaintiff is informed and believes, and based thereon alleges, that in the three (3)  
23 years before the filing of the Complaint in this Action through the present, Defendants, due to the  
24 failure, at times, to provide overtime wages mentioned above, failed to pay Plaintiff and Class  
25 Members all wages earned prior to resignation or termination in accordance with Labor Code  
26 sections 201 or 202.

27 65. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and  
28 Class Members all wages earned prior to termination or resignation in accordance with Labor Code  
sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff

1 and Class Members at the time of termination in accordance with Labor Code sections 201 and 202,  
2 but intentionally adopted policies or practices incompatible with the requirements of Labor Code  
3 sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination  
4 or resignation..

5 66. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to  
6 waiting time penalties from the date their earned and unpaid wages were due, upon termination or  
7 resignation, until paid, up to a maximum of thirty (30) days.

8 67. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have  
9 suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned  
10 prior to termination or resignation.

11 68. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections  
12 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover  
13 waiting time penalties, interest, and their costs of suit, as well.

14 **SIXTH CAUSE OF ACTION**

15 **(Failure to Provide Accurate Wage Statements – Against All Defendants)**

16 69. Plaintiff realleges and incorporates by reference all of the allegations contained in  
17 the preceding paragraphs as though fully set forth hereat.

18 70. At all relevant times, Plaintiff and Class Members were employees or former  
19 employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

20 71. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members  
21 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized  
22 statement that accurately reflects, among other things, gross wages earned; total hours worked; net  
23 wages earned; all applicable hourly rates in effect during the pay period and the corresponding  
24 number of hours worked at each hourly rate; and the name and address of the legal entity that is the  
25 employer, among other things.

26 72. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year  
27 before the filing of the Complaint in this Action through the present, Defendants failed to comply  
28 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their

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1 failure, at times, to furnish Plaintiff and Class Members with accurate itemized statements that  
2 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned;  
3 all applicable hourly rates in effect during the pay period and the corresponding number of hours  
4 worked at each hourly rate; and the name and address of the legal entity that is the employer, among  
5 other things.

6 73. Defendants' failure to, at times, provide Plaintiff and Class Members with accurate  
7 wage statements was knowing, intentional, and willful. Defendants had the ability to provide  
8 Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully  
9 provided wage statements that Defendants knew were not accurate.

10 74. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have  
11 suffered injury. The absence of accurate information on Class Members' wage statements at times  
12 has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and  
13 mathematical computations to determine the amount of wages owed; causes difficulty and expense  
14 in attempting to reconstruct time and pay records; and led to submission of inaccurate information  
15 about wages and amounts deducted from wages to state and federal governmental agencies, among  
16 other things.

17 75. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and Class Members  
18 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor  
19 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent  
20 pay period, not to exceed an aggregate \$4,000.00 per employee.

21 76. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil  
22 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to  
23 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable  
24 attorneys' fees, and costs of suit.

25 **SEVENTH CAUSE OF ACTION**

26 **(Failure to Timely Pay Wages During Employment – Against All Defendants)**

27 77. Plaintiffs reallege each and every allegation set forth in the preceding paragraphs and  
28 incorporate each by reference as though fully set forth hereat.

78. At all relevant times, Plaintiffs and Class Members were employees or former employees of Defendants covered by Labor Code section 204 and applicable Wage Orders.

79. Labor Code section 204 provides that “[l]abor performed between the 1<sup>st</sup> and 15<sup>th</sup> days, inclusive, of any calendar month shall be paid for between the 16<sup>th</sup> and 26<sup>th</sup> day of the month during which the labor was performed, and labor performed between the 16<sup>th</sup> and the last day, inclusive, of any calendar month, shall be paid for between the 1<sup>st</sup> and 10<sup>th</sup> day of the following month.”

80. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

81. Plaintiffs are informed and believe, and based thereon alleges, that in the one (1) year before the filing of the Complaint in this Action through the present, Defendants employed policies and practices that resulted in, at times, not paying Plaintiffs and Class Members in accordance with Labor Code section 204.

82. Pursuant to Labor Code section 210, Plaintiffs and Class Members are entitled to recover penalties for Defendants’ violations of Labor Code section 204, in the amount of one hundred dollars (\$100) for each initial violation per Class Member, and two hundred dollars (\$200) for each subsequent violation in connection with each payment that was made in violation of Labor Code section 204 per Class Member, plus 25 percent of the amount unlawfully withheld.

83. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiffs and Class Members are entitled to recovery of penalties, interest, and their costs of suit, as well.

// /

// /

**EIGHTH CAUSE OF ACTION**

**(Violation of Labor Code § 227.3 – Against All Defendants)**

84. Plaintiff re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereon.

85. According to Labor Code section 227.3, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served.

86. Plaintiff is informed and believes, and based thereon alleges that, at all times relevant hereto, Defendants promulgated and maintained a uniform policy providing for paid vacations, and that Plaintiff's employment contract with Defendants included paid vacations.

87. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have had a consistent policy of failing to provide Plaintiff and similarly situated employees or former employees within the State of California with compensation at their final rate of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

38. As a proximate result of Defendants' failure to pay vested vacation at the final rate of Plaintiff and Class Members upon their resignation or termination, Defendants violated Labor Code section 227.3, entitling Plaintiff and Class Members to all vested and unused vacation pay at their final rate of pay, as set out in Defendants' policy or the contract of employment between Plaintiff and Class Members, on the one hand, and Defendants, on the other hand.

89. As a further proximate result of Defendants' above-described acts and/or omissions, Plaintiff and Class Members are entitled to recover reasonable attorneys' fees, costs of suit and prejudgment interest.

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**NINTH CAUSE OF ACTION**

**(Unfair Competition – Against All Defendants)**

90. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

91. Plaintiff is informed and believes, and based thereon alleges that the unlawful conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business and Professions Code section 17200. Due to their unlawful business practices in violation of the Labor Code, Defendants have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their obligations to compensate employees in accordance with the Labor Code.

92. As a result of Defendants' unfair competition as alleged herein, Plaintiff and Class Members have suffered injury in fact and lost money or property.

93. Pursuant to Business and Professions Code section 17203, Plaintiff and Class Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the establishment of appropriate and effective means to prevent further violations, as well as restitution of all wages and other monies owed to them under the Labor Code, including interest thereon, in which they had a property interest and which Defendants nevertheless failed to pay them and instead withheld and retained for themselves. Restitution of the money owed to Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched by their failure to comply with the Labor Code.

94. Plaintiff and Class Members are entitled to costs of suit under Code of Civil Procedure section 1032 and interest under Civil Code section 3287.

**DEMAND FOR JURY TRIAL**

95. Plaintiff demands a trial by jury on all causes of action contained herein.

**PRAYER**

WHEREFORE, on behalf of Plaintiff and Class Members, Plaintiff prays for judgment against Defendants as follows:

A. An order certifying this case as a Class Action;

- 1 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's  
2 counsel as class counsel;
- 3 C. Damages for all wages earned and owed, including minimum. overtime wages and  
4 unpaid wages for vested vacation time, under Labor Code sections 510, 1194, 1197  
5 and 1199 and 227.3;
- 6 D. Liquidated damages pursuant to Labor Code section 1194.2;
- 7 E. Damages for unpaid premium wages from missed meal and rest periods under,  
8 among other Labor Code sections, 512 and 226.7;
- 9 F. Penalties for inaccurate wage statements under Labor Code section 226,  
10 subdivision (e);
- 11 G. Waiting time penalties under Labor Code section 203;
- 12 H. Penalties to timely pay wages under Labor Code section 210;
- 13 I. Preliminary and permanent injunctions prohibiting Defendants from further  
14 violating the California Labor Code and requiring the establishment of appropriate  
15 and effective means to prevent future violations;
- 16 J. Restitution of wages and benefits due which were acquired by means of any unfair  
17 business practice, according to proof;
- 18 K. For attorneys' fees in prosecuting this action;
- 19 L. For costs of suit incurred herein; and
- 20 M. For such other and further relief as the Court deems just and proper.

21  
22 Dated: September 13, 2021

BIBIYAN LAW GROUP, P.C.

23  
24 BY: 

25 DAVID D. BIBIYAN  
26 SARA EHSANI-NIA

27 Attorneys for Plaintiff GENARO JUAREZ on behalf of  
28 himself and all others similarly situated

Exhibit 2

Assigned for all purposes to: Spring Street Courthouse, Judicial Officer: David Cunningham III

Electronically FILED by Superior Court of California, County of Los Angeles on 08/26/2022 04:32 PM Sherri R. Carter, Executive Officer/Clerk of Court, by G. Carini, Deputy Clerk

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Attorneys for Plaintiff, CAYA RODRIGUEZ

an individual and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA****FOR THE COUNTY OF LOS ANGELES**CAYA RODRIGUEZ, an individual and on  
behalf of all others similarly situated,

Plaintiff,

v.

RAISING CANE'S USA, L.L.C., a California  
limited liability company; RAISING CANE'S  
RESTAURANTS, L.L.C., a California limited  
liability company; and DOES 1 through 100,  
inclusive,

Defendants.

CASE NO.: **22STCV27956****CLASS ACTION COMPLAINT FOR:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO TIMELY PAY WAGES;
8. FAILURE TO INDEMNIFY;
9. UNFAIR COMPETITION.

**DEMAND FOR JURY TRIAL**

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff CAYA RODRIGUEZ ("Plaintiff"), an individual and on behalf of  
all others similarly situated, and alleges as follows:

**GENERAL ALLEGATIONS**

**INTRODUCTION**

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against RAISING CANE'S USA, L.L.C. ("RCU") a California limited liability company; RAISING CANE'S RESTAURANTS, L.L.C. ("RCR"), a California limited liability company; and any of their respective subsidiaries or affiliated companies within the State of California (and, with DOES 1 through 100, as further defined below, "Defendants") on behalf of Plaintiff and all other current and former non-exempt California employees employed by or formerly employed by Defendants ("Class Members").

**PARTIES**

**A. Plaintiff**

2. Plaintiff CAYA RODRIGUEZ is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon allege that Defendants employed Plaintiff CAYA RODRIGUEZ as a non-exempt employee, with duties that included, but were not limited to, servicing patrons, cooking, maintaining quality control, and monitoring food safety from approximately December of 2021 and through approximately May of 2022

**B. Defendants**

3. Plaintiff is informed and believes and based thereon alleges that defendant RCU is, and at all times relevant hereto was, a limited liability company organized and existing under and by virtue of the laws of the State of California and doing business in the County of Los Angeles, State of California. At all relevant times herein, RCU employed Plaintiff and similarly situated employees within the State of California.

4. Plaintiff is informed and believes and based thereon alleges that defendant RCR is, and at all times relevant hereto was, a limited liability company organized and existing under and by virtue of the laws of the State of California and doing business in the County of Los Angeles, State of California. At all relevant times herein, RCR employed Plaintiff and similarly situated employees within the State of California.

5. The true names and capacities, whether individual, corporate, associate, or otherwise,

1 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,  
2 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.  
3 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated  
4 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.  
5 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of  
6 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is  
7 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent  
8 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or  
9 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the  
10 other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall  
11 include RCU, RCR, and any of their parent, subsidiary, or affiliated companies within the State of  
12 California, as well as DOES 1 through 100 identified herein.

13 **JOINT LIABILITY ALLEGATIONS**

14 6. Plaintiff is informed and believes and based thereon alleges that all the times  
15 mentioned herein, each of the Defendants was the agent, principal, employee, employer,  
16 representative, joint venture or co-conspirator of each of the other defendants, either actually or  
17 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,  
18 employment, joint venture, and conspiracy.

19 7. All of the acts and conduct described herein of each and every corporate defendant  
20 was duly authorized, ordered, and directed by the respective and collective defendant corporate  
21 employers, and the officers and management-level employees of said corporate employers. In  
22 addition thereto, said corporate employers participated in the aforementioned acts and conduct of  
23 their said employees, agents, and representatives, and each of them; and upon completion of the  
24 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant  
25 corporations respectively and collectively ratified, accepted the benefits of, condoned, lauded,  
26 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the  
27 aforementioned corporate employees, agents and representatives.

28 8. As a result of the aforementioned facts, Plaintiff is informed and believes, and based

1 thereon alleges that Defendants, and each of them, are joint employers.

2 **JURISDICTION**

3 9. Jurisdiction exists in the Superior Court of the State of California pursuant to Code  
4 of Civil Procedure section 410.10.

5 10. Venue is proper in Los Angeles County, California pursuant to Code of Civil  
6 Procedure sections 392, et seq. because, among other things, Los Angeles County is where the  
7 causes of action complained of herein arose; the county in which the employment relationship  
8 began; the county in which performance of the employment contract, or part of it, between Plaintiff,  
9 or some of them, and Defendants was due to be performed; the county in which the employment  
10 contract, or part of it, between Plaintiff, or some of them, and Defendants was actually performed;  
11 and the county in which Defendants, or some of them, reside. Moreover, the unlawful acts alleged  
12 herein have a direct effect on Plaintiff and Class Members in Los Angeles County, and because  
13 Defendants employ numerous Class Members in Los Angeles County.

14 **FACTUAL BACKGROUND**

15 11. For at least four (4) years prior to the filing of this action and continuing to the  
16 present, Defendants have, at times, failed to pay overtime wages to Plaintiff and Class Members, or  
17 some of them, in violation of California state wage and hour laws as a result of, without limitation,  
18 Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per week, and  
19 seven consecutive work days in a work week without being properly compensated for hours worked  
20 in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours  
21 worked on the seventh consecutive work day in a work week by, among other things, failing to  
22 accurately track and/or pay for all minutes actually worked at the proper overtime rate of pay;  
23 engaging, suffering, or permitting employees to work off the clock, including, without limitation,  
24 by requiring employees to complete pre-shift tasks before clocking in and post-shift tasks after  
25 clocking out, to clock out for meal periods and continue working, to make phone calls off the clock;  
26 failing to include all forms of remuneration, including piece rate compensation, non-discretionary  
27 bonuses, incentive pay, meal allowances, and other forms of remuneration into the regular rate of  
28 pay for the workweeks in which overtime was worked and the additional compensation was earned

1 for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time  
2 entries, editing and/or manipulation of time entries to show less hours than actually worked, and for  
3 paying straight pay instead of overtime pay to the detriment of Plaintiff and Class Members.

4 12. For at least four (4) years prior to the filing of this Action and continuing to the  
5 present, Defendants have, at times, failed to pay minimum wages to Plaintiff and Class Members,  
6 or some of them, in violation of California state wage and hour laws as a result of, among other  
7 things, at times, failing to accurately track and/or pay for all hours actually worked at their regular  
8 rate of pay that is above the minimum wage engaging, suffering, or permitting employees to work  
9 off the clock, including, without limitation, by requiring employees to complete pre-shift tasks  
10 before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue  
11 working, to make phone calls off the clock; detrimental rounding of employee time entries, editing  
12 and/or manipulation of time entries to show less hours than actually worked; failing to track and pay  
13 for all nonproductive time and failing to accurately track and pay for rest and recovery periods that  
14 is separate and apart from any piece-rate compensation, to the detriment of Plaintiff and Class  
15 Members.

16 13. For at least four (4) years prior to the filing of this Action and continuing to the  
17 present, Defendants have, at times, failed to provide Plaintiff and Class Members, or some of them,  
18 full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than  
19 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on  
20 which they worked in excess of ten (10) hours in a work day, and failing to provide compensation  
21 for such unprovided meal periods as required by California wage and hour laws.

22 14. For at least four (4) years prior to the filing of this action and continuing to the  
23 present, Defendants have, at times, failed to authorize and permit Plaintiff and Class Members, or  
24 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major  
25 fraction thereof and failed to provide compensation for such unprovided rest periods as required by  
26 California wage and hour laws.

27 15. For at least three (3) years prior to the filing of this action and continuing to the  
28 present, Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the

1 full amount of their wages owed to them upon termination and/or resignation as required by Labor  
2 Code sections 201 and 202, including for, without limitation, failing to pay overtime wages,  
3 minimum wages, for withholding wages, and premium wages.

4 16. For at least one (1) year prior to the filing of this Action and continuing to the present,  
5 Defendants have, at times, failed to furnish Plaintiff and Class Members, or some of them, with  
6 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages  
7 earned; all applicable hourly rates in effect during the pay period and the corresponding number of  
8 hours worked at each hourly rate; applicable piece rates in effect during the pay period and the  
9 corresponding number of pieces earned; the name and address of the legal entity that is the employer;  
10 name and address of the entity securing the services of the farm labor contractor who employed  
11 Plaintiff and Class Members; the total hours of compensable rest and recovery periods; the total  
12 hours of nonproductive time, and other such information as required by Labor Code sections 226,  
13 subdivision (a) and 226.2. As a result thereof, Defendants have further failed to furnish employees  
14 with an accurate calculation of gross and gross wages earned, as well as gross and net wages paid.

15 17. For at least one (1) year prior to the filing of this action and continuing to the present,  
16 Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the full  
17 amount of their wages for labor performed in a timely fashion as required under Labor Code section  
18 204.

19 18. For at least three (3) years prior to the filing of this action and continuing to the  
20 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the  
21 costs incurred in using cellular phones for work-related purposes necessary to perform work duties.

22 19. Plaintiff, on their own behalf and on behalf of Class Members, brings this action  
23 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.2,  
24 226.7, 510, 512, 1194, 1194.2, 1197, 2802, 2810.3, *et seq.*, and California Code of Regulations,  
25 Title 8, section 11040, seeking overtime wages, minimum wages, payment of premium wages for  
26 missed meal and rest periods, failure to pay timely wages, waiting time penalties, wage statement  
27 penalties, failure to indemnify work-related expenses, other such provisions of California law, and  
28 reasonable attorneys' fees and costs.

20. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, pursuant to Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the establishment of appropriate and effective means to prevent further violations, as well as all monies owed but withheld and retained by Defendants to which Plaintiff and Class Members are entitled, as well as restitution of amounts owed.

### **CLASS ACTION ALLEGATIONS**

21. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current and former non-exempt employees of Defendants within the State of California at any time commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice of the class action is provided to the class (collectively referred to as "Class Members").

22. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b) to amend or modify the class description with greater specificity, further divide the defined class into subclasses, and to further specify or limit the issues for which certification is sought.

23. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

#### **A. Numerosity**

24. The potential Class Members as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined yet, Plaintiff is informed and believes that there are over seventy-five (75) Class Members employed by Defendants within the State of California.

25. Accounting for employee turnover during the relevant periods necessarily increases this number. Plaintiff alleges Defendants' employment records would provide information as to the number and location of all Class Members. Joinder of all members of the proposed Class is not practicable.

#### **B. Commonality**

26. There are questions of law and fact common to Class Members. These common questions include, but are not limited to:

- A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours worked at a proper overtime rate of pay?
- B. Did Defendants violate Labor Code sections 226.2, 510 and 1194 by failing to include piece rate compensation in calculation of the legal piece rate overtime rate?
- C. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay for all other time worked at the employee's regular rate of pay and a rate of pay that is greater than the applicable minimum wage?
- D. Did Defendants violate Labor Code section 226.2 by failing to track and pay for all nonproductive time that is separate and apart from any piece rate compensation?
- E. Did Defendants violate Labor Code section 226.2 by failing to track and pay for all rest and recovery time that is separate and apart from any piece rate compensation?
- F. Did Defendants violate Labor Code section 512 by not authorizing or permitting Class Members to take compliant meal periods?
- G. Did Defendants violate Labor Code section 226.7 by not providing Class Members with additional wages for missed or interrupted meal periods?
- H. Did Defendants violate applicable Wage Orders by not authorizing or permitting Class Members to take compliant rest periods?
- I. Did Defendants violate Labor Code section 226.7 by not providing Class Members with additional wages for missed rest periods?
- J. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class Members upon termination or resignation all wages earned?
- K. Are Defendants liable to Class Members for waiting time penalties under Labor Code section 203?
- L. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing Class Members with accurate wage statements?
- M. Did Defendants violate Labor Code sections 226 and 226.2 by failing to furnish

employees paid on a piece rate basis with an itemized statement that included the total hours of compensable nonproductive time, the rate of compensation, and the gross wages paid for those periods during the pay period?

N. Did Defendants violate Labor Code sections 226 and 226.2 by failing to furnish employees paid on a piece rate basis with an itemized statement that included the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period?

O. Did Defendants fail to pay Class Members in a timely fashion as required under Labor Code section 204?

P. Did Defendants fail to indemnify Class Members for all necessary expenditures or losses incurred in direct consequence of the discharge of their duties or by obedience to the directions of Defendants as required under Labor Code section 2802?

Q. Did Defendants violate the Unfair Competition Law, Business and Professions Code section 17200, *et seq.*, by their unlawful practices as alleged herein?

R. Are Class Members entitled to restitution of wages under Business and Professions Code section 17203?

S. Are Class Members entitled to costs and attorneys' fees?

T. Are Class Members entitled to interest?

**C. Typicality**

27. The claims of Plaintiff herein alleged are typical of those claims which could be alleged by any Class Members, and the relief sought is typical of the relief which would be sought by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws and regulations that have the force and effect of law and statutes as alleged herein.

**D. Adequacy of Representation**

28. Plaintiff will fairly and adequately represent and protect the interest of Class Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and hour class actions.

1           E.     Superiority of Class Action

2       29.       A class action is superior to other available means for the fair and efficient  
3 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and  
4 questions of law and fact common to Class Members predominate over any questions affecting only  
5 individual Class Members. Class Members, as further described therein, have been damaged and  
6 are entitled to recovery by reason of Defendants' policies and/or practices that have resulted in the  
7 violation of the Labor Code at times, as set out herein.

8       30.       Class action treatment will allow Class Members to litigate their claims in a manner  
9 that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of  
10 any difficulties that are likely to be encountered in the management of this action that would  
11 preclude its maintenance as a class action.

12                                   FIRST CAUSE OF ACTION

13                               (Failure to Pay Overtime Wages – Against All Defendants)

14       31.       Plaintiff realleges and incorporates by reference all of the allegations contained in  
15 the preceding paragraphs as though fully set forth hereat.

16       32.       At all relevant times, Plaintiff and Class Members were employees or former  
17 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable  
18 Wage Orders.

19       33.       At all times relevant to this Complaint, Labor Code section 510 was in effect and  
20 provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in  
21 one workday and any work in excess of forty hours in any one workweek . . . shall be compensated  
22 at the rate of no less than one and one-half times the regular rate of pay for an employee.”

23       34.       At all times relevant to this Complaint, Labor Code section 510 further provided that  
24 “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice  
25 the regular rate of pay for an employee. In addition, any work in excess of eight hours on any  
26 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of  
27 pay.”

28       35.       Four (4) years prior to the filing of the Complaint in this Action through the present,

1 Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more  
2 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)  
3 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a  
4 result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours  
5 actually worked at the proper overtime rate of pay; engaging, suffering, or permitting employees to  
6 work off the clock, including, without limitation, by requiring employees to complete pre-shift tasks  
7 before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue  
8 working, to make phone calls off the clock; failing to include all forms of remuneration, including  
9 piece rate compensation, non-discretionary bonuses, incentive pay, meal allowances, and other  
10 forms of remuneration into the regular rate of pay for the workweeks in which overtime was worked  
11 and the additional compensation was earned for the purpose of calculating the overtime rate of pay;  
12 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show  
13 less hours than actually worked, and for paying straight pay instead of overtime pay to the detriment  
14 of Employee and other aggrieved employees, to the detriment of Plaintiff and Class Members.

15 36. Accordingly, by requiring Plaintiff and Class Members to, at times, work greater  
16 than eight (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays  
17 without properly compensating overtime wages at the proper overtime rate of pay, Defendants, on  
18 occasion, willfully violated the provisions of the Labor Code, among others, sections 510, 1194, and  
19 applicable IWC Wage Orders, and California law.

20 37. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have  
21 been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery,  
22 plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor Code section 1194  
23 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

## 24 **SECOND CAUSE OF ACTION**

### 25 **(Failure to Pay Minimum Wages – Against All Defendants)**

26 38. Plaintiff realleges and incorporates by reference all of the allegations contained in  
27 the preceding paragraphs as though fully set forth hereat.

28 39. At all relevant times, Plaintiff and Class Members were employees or former

1 employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage Orders.  
2 40. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and  
3 Class Members were entitled to receive minimum wages for all hours worked or otherwise under  
4 Defendants' control.

5 41. For four (4) years prior to the filing of the Complaint in this Action through the  
6 present, Defendants failed, at times, to accurately track and/or pay for all hours actually worked at  
7 their regular rate of pay that is above the minimum wage; engaging, suffering, or permitting  
8 employees to work off the clock, including, without limitation, by requiring employees to complete  
9 pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods  
10 and continue working, to make phone calls off the clock; detrimental rounding of employee time  
11 entries, editing and/or manipulation of time entries to show less hours than actually worked; failing  
12 to track and pay for all nonproductive time and failing to accurately track and pay for rest and  
13 recovery periods that is separate and apart from any piece rare compensation, to the detriment of  
14 Plaintiff and Class Members.

15 42. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have  
16 suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages  
17 for all hours worked or otherwise due.

18 43. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure  
19 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to  
20 recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated  
21 damages, reasonable attorneys' fees and costs of suit.

### 22 **THIRD CAUSE OF ACTION**

#### 23 **(Failure to Provide Meal Periods – Against All Defendants)**

24 44. Plaintiff realleges and incorporates by reference all of the allegations contained in  
25 the preceding paragraphs as though fully set forth hereat.

26 45. At all relevant times, Plaintiff and Class Members were employees or former  
27 employees of Defendants covered by Labor Code section 512 and applicable Wage Orders.

28 46. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall

1 employ an employee for a work period of more than five (5) hours without a timely meal break of  
2 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.  
3 Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours  
4 per day without providing the employee with a second timely meal period of not less than thirty (30)  
5 minutes in which the employee is relieved of all of his or her duties.

6 47. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee  
7 with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission,  
8 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate  
9 of compensation for each workday that the meal period is not provided.

10 48. For four (4) years prior to the filing of the Complaint in this Action through the  
11 present, Plaintiff and Class Members were, at times, not provided complete, timely 30-minute, duty-  
12 free uninterrupted meal periods every five hours of work without waiving the right to take them, as  
13 permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the  
14 Class Member's regular rate of compensation on the occasions that Class Members were not  
15 provided compliant meal periods.

16 49. By their failure to provide Plaintiff and Class Members compliant meal periods as  
17 contemplated by Labor Code section 512, among other California authorities, and failing, at times,  
18 to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully  
19 violated the provisions of Labor Code section 512 and applicable Wage Orders.

20 50. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have  
21 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay  
22 owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

23 51. Plaintiff and Class Members are entitled to recover the full amount of their unpaid  
24 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus  
25 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,  
26 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

27 **FOURTH CAUSE OF ACTION**

28 **(Failure to Provide Rest Periods – Against All Defendants)**

1       52.       Plaintiff realleges and incorporates by reference all of the allegations contained in  
2 the preceding paragraphs as though fully set forth hereat.

3       53.       At all relevant times, Plaintiff and Class Members were employees or former  
4 employees of Defendants covered by applicable Wage Orders.

5       54.       California law and applicable Wage Orders require that employers “authorize and  
6 permit” employees to take ten (10) minute rest periods in about the middle of each four (4) hour  
7 work period “or major fraction thereof.” Accordingly, employees who work shifts of three and-a-  
8 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who  
9 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes  
10 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided  
11 thirty (30) minutes of paid rest period.

12       55.       Pursuant to Labor Code section 226.7, if an employer fails to provide an employee  
13 with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare  
14 Commission, the employer shall pay the employee one (1) additional hour of pay at the employee’s  
15 regular rate of compensation for each work day that the rest period is not provided.

16       56.       For four (4) years prior to the filing of the Complaint in this Action through the  
17 present, Plaintiff and Class Members were, at times, not authorized or permitted to take complete,  
18 timely 10-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction  
19 thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class  
20 Member’s regular rate of compensation on the occasions that Class Members were not authorized  
21 or permitted to take compliant rest periods.

22       57.       By their failure, at times, to authorize and permit Plaintiff and Class Members to take  
23 rest periods contemplated by California law, and one (1) additional hour of pay at the employee’s  
24 regular rate of compensation for such unprovided rest periods, as alleged above, Defendants  
25 willfully violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

26       58.       As a result of Defendants’ unlawful conduct, Plaintiff and Class Members have  
27 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay  
28 owed for rest periods that they were not authorized or permitted to take.

59. Plaintiff and Class Members are entitled to recover the full amount of their unpaid additional pay for unprovided compliant rest periods, in amounts to be determined at trial, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

**FIFTH CAUSE OF ACTION**

**(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

60. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

61. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable Wage Orders.

62. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were entitled upon termination to timely payment of all wages earned and unpaid prior to termination. Discharged Class Members were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Class Members who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid at the time of resignation.

63. Plaintiff is informed and believes, and based thereon alleges, that in the three (3) years before the filing of the Complaint in this Action through the present, Defendants, due to the failure, at times, to provide overtime wages mentioned above, failed to pay Plaintiff and Class Members all wages earned prior to resignation or termination in accordance with Labor Code sections 201 or 202.

64. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and Class Members all wages earned prior to termination or resignation in accordance with Labor Code sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff and Class Members at the time of termination in accordance with Labor Code sections 201 and 202, but intentionally adopted policies or practices incompatible with the requirements of Labor Code

1 sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination  
2 or resignation.

3 65. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to  
4 waiting time penalties from the date their earned and unpaid wages were due, upon termination or  
5 resignation, until paid, up to a maximum of thirty (30) days.

6 66. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have  
7 suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned  
8 prior to termination or resignation.

9 67. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections  
10 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover  
11 waiting time penalties, interest, and their costs of suit, as well.

12 **SIXTH CAUSE OF ACTION**

13 **(Failure to Provide Accurate Wage Statements – Against All Defendants)**

14 68. Plaintiff realleges and incorporates by reference all of the allegations contained in  
15 the preceding paragraphs as though fully set forth hereat.

16 69. At all relevant times, Plaintiff and Class Members were employees or former  
17 employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

18 70. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members  
19 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized  
20 statement that accurately reflects, among other things, gross wages earned; total hours worked; net  
21 wages earned; all applicable hourly rates in effect during the pay period and the corresponding  
22 number of hours worked at each hourly rate; and the name and address of the legal entity that is the  
23 employer; and the name and address of the entity securing the services of the farm labor contractor  
24 who employed Plaintiff and Class Members, among other things. Further, Labor Code section 226.2  
25 requires that wage statements also include the total compensation earned for piece rate work  
26 performed, total compensation for nonproductive work performed, total compensation for rest and  
27 recovery periods, the total hours of nonproductive time worked and the rate of pay therefore, the  
28 total hours of rest and recovery periods taken and the rate of pay therefore, the total amount of

1 overtime wages earned, and the proper overtime rate(s) of pay.

2 71. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed  
3 to provide Plaintiff and Class Members accurate itemized wage statements pursuant to Labor Code  
4 sections 226, subdivision (a) and 226.2, subdivisions (a)(2)(A-B) on each and every wage statement  
5 that should have been provided, including by failing to itemize and/or pay all nonproductive time  
6 and rest and recovery time for each.

7 72. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year  
8 before the filing of the Complaint in this Action through the present, Defendants failed to comply  
9 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their  
10 failure, at times, to furnish Plaintiff and Class Members with accurate itemized statements that  
11 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned;  
12 all applicable hourly rates in effect during the pay period and the corresponding number of hours  
13 worked at each hourly rate; applicable piece rates in effect during the pay period and the  
14 corresponding number of pieces earned; the name and address of the legal entity that is the employer;  
15 name and address of the entity securing the services of the farm labor contractor who employed  
16 Plaintiff and Class Members; the total hours of compensable rest and recovery periods; the total  
17 hours of nonproductive time, and other such information as required by Labor Code sections 226,  
18 subdivision (a) and 226.2. Defendants' failure to, at times, provide Plaintiff and Class Members  
19 with accurate wage statements was knowing, intentional, and willful. Defendants had the ability to  
20 provide Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully  
21 provided wage statements that Defendants knew were not accurate.

22 73. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have  
23 suffered injury. The absence of accurate information on Class Members' wage statements at times  
24 has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and  
25 mathematical computations to determine the amount of wages owed; causes difficulty and expense  
26 in attempting to reconstruct time and pay records; and led to submission of inaccurate information  
27 about wages and amounts deducted from wages to state and federal governmental agencies, among  
28 other things.

1       74. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and Class Members  
2 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor  
3 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent  
4 pay period, not to exceed an aggregate \$4,000.00 per employee.

5       75. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil  
6 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to  
7 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable  
8 attorneys' fees, and costs of suit.

9                                   **SEVENTH CAUSE OF ACTION**

10                   **(Failure to Timely Pay Wages During Employment – Against All Defendants)**

11       76. Plaintiff reallege each and every allegation set forth in the preceding paragraphs and  
12 incorporate each by reference as though fully set forth hereat.

13       77. At all relevant times, Plaintiff and Class Members were employees or former  
14 employees of Defendants covered by Labor Code section 204 and applicable Wage Orders.

15       78. Labor Code section 204 provides that “[l]abor performed between the 1<sup>st</sup> and 15<sup>th</sup>  
16 days, inclusive, of any calendar month shall be paid for between the 16<sup>th</sup> and 26<sup>th</sup> day of the month  
17 during which the labor was performed, and labor performed between the 16<sup>th</sup> and the last day,  
18 inclusive, of any calendar month, shall be paid for between the 1<sup>st</sup> and 10<sup>th</sup> day of the following  
19 month.”

20       79. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely  
21 independent and apart from, any other penalty provided in this article, every person who fails to pay  
22 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and  
23 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars  
24 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful  
25 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25  
26 percent of the amount unlawfully withheld.”

27       80. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year  
28 before the filing of the Complaint in this Action through the present, Defendants employed policies

1 and practices that resulted in, at times, not paying Plaintiff and Class Members in accordance with  
2 Labor Code section 204.

3 81. Pursuant to Labor Code section 210, Plaintiff and Class Members are entitled to  
4 recover penalties for Defendants' violations of Labor Code section 204, in the amount of one  
5 hundred dollars (\$100) for each initial violation per Class Member, and two hundred dollars (\$200)  
6 for each subsequent violation in connection with each payment that was made in violation of Labor  
7 Code section 204 per Class Member, plus 25 percent of the amount unlawfully withheld.

8 82. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and  
9 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recovery of penalties,  
10 interest, and their costs of suit, as well.

11 **EIGHTH CAUSE OF ACTION**

12 **(Violation of Labor Code § 2802 – Against All Defendants)**

13 83. Plaintiff realleges and incorporates by reference all of the allegations contained in  
14 the preceding paragraphs as though fully set forth hereat.

15 84. At all relevant times, Plaintiff and Class Members were employees or former  
16 employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.

17 85. Labor Code section 2802, subdivision (a) provides that “an employer shall indemnify  
18 his or her employee for all necessary expenditures or losses incurred by the employee in direct  
19 consequence of the discharge of his or her duties . . .”

20 86. For three (3) years prior to the filing of the Complaint in this Action through the  
21 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,  
22 necessary expenditures or losses in direct consequence of the discharge of their duties or at the  
23 obedience to the directions of Defendants that included, without limitation: purchasing and using  
24 cellular phones for work-related purposes.

25 87. During that time period, Plaintiff is informed and believes, and based thereon allege  
26 that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiff and  
27 Class Members for those losses and/or expenditures.

28 88. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have

1 suffered damages in an amount subject to proof, to the extent they were not reimbursed for the  
2 herein-described losses and/or expenditures.

3 89. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and  
4 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover  
5 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and  
6 costs of suit.

7 **NINTH CAUSE OF ACTION**

8 **(Unfair Competition – Against All Defendants)**

9 90. Plaintiff realleges and incorporates by reference all of the allegations contained in  
10 the preceding paragraphs as though fully set forth hereat.

11 91. Plaintiff is informed and believes, and based thereon alleges that the unlawful  
12 conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business  
13 and Professions Code section 17200. Due to their unlawful business practices in violation of the  
14 Labor Code, Defendants have gained a competitive advantage over other comparable companies  
15 doing business in the State of California that comply with their obligations to compensate employees  
16 in accordance with the Labor Code.

17 92. As a result of Defendants' unfair competition as alleged herein, Plaintiff and Class  
18 Members have suffered injury in fact and lost money or property.

19 93. Pursuant to Business and Professions Code section 17203, Plaintiff and Class  
20 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor  
21 Code and requiring the establishment of appropriate and effective means to prevent further  
22 violations, as well as restitution of all wages and other monies owed to them under the Labor Code,  
23 including interest thereon, in which they had a property interest and which Defendants nevertheless  
24 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed  
25 to Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched  
26 by their failure to comply with the Labor Code.

27 94. Plaintiff and Class Members are entitled to costs of suit under Code of Civil  
28 Procedure section 1032 and interest under Civil Code section 3287.

1 Dated: August 26, 2022

BIBIYAN LAW GROUP, P.C.

2  
3 BY: /s/ Alexander D. Wallin

4 ALEXANDER D. WALLIN

5 Attorneys for Plaintiff CAYA RODRIGUEZ an  
6 individual and on behalf of all others similarly situated  
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Exhibit 3

Assigned for all purposes to: Spring Street Courthouse, Judicial Officer: Maren Nelson

Electronically FILED by Superior Court of California, County of Los Angeles on 03/30/2023 02:14 PM David W. Slayton, Executive Officer/Clerk of Court, by R. Lozano, Deputy Clerk

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Attorneys for Plaintiff, ADRIAN RIVERO, and  
on behalf of himself and all others similarly situated**SUPERIOR COURT OF THE STATE OF CALIFORNIA****FOR THE COUNTY OF LOS ANGELES**ADRIAN RIVERO, an individual and on  
behalf of all others similarly situated,

Plaintiff,

v.

AUTOZONERS, LLC, a Nevada limited  
liability company; AUTOZONE, INC., a  
Nevada corporation; AUTOZONE  
WEST, LLC, a Nevada limited liability  
company; AUTOZONE PARTS, INC., a  
Nevada corporation; JESUS  
BARRAGAN, an individual; and DOES  
1 through 100, inclusive,

Defendants.

CASE NO.: 23STCV07025

**CLASS ACTION COMPLAINT FOR:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO TIMELY PAY WAGES;
8. FAILURE TO INDEMNIFY;
9. VIOLATION OF LABOR CODE § 227.3;  
and
10. UNFAIR COMPETITION.

**DEMAND FOR JURY TRIAL**

[Amount in Controversy Exceeds \$25,000.00]

1 Plaintiff Adrian Rivero, on behalf of himself and all others similarly situated, alleges as  
2 follows:

3 **GENERAL ALLEGATIONS**

4 **INTRODUCTION**

5 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against  
6 Autozoners, LLC, and any of its respective subsidiaries or affiliated companies within the State of  
7 California ("Autozoners"); Autozone, Inc., and any of its respective subsidiaries or affiliated  
8 companies within the State of California ("Autozone"); Autozone West LLC, and any of its  
9 respective subsidiaries or affiliated companies within the State of California ("Autozone West");  
10 Autozone Parts, Inc., and any of its respective subsidiaries or affiliated companies within the State  
11 of California ("Autozone Parts"); and Jesus Barragan ("Barragan") (collectively, with DOES 1  
12 through 100, as further defined below, "Defendants") on behalf of Plaintiff and all other current and  
13 former non-exempt California employees employed by or formerly employed by Defendants  
14 ("Class Members").

15 **PARTIES**

16 **A. Plaintiff**

17 2. Plaintiff Adrian Rivero is a resident of the State of California. At all relevant times  
18 herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants employed  
19 Plaintiff as a non-exempt employee, with duties that included, but were not limited to, customer  
20 service and auto part sales. Plaintiff is informed and believes, and based thereon alleges, that  
21 Plaintiff worked for Defendants from approximately July of 2019 through the present.

22 **B. Defendants**

23 3. Plaintiff is informed and believes and based thereon allege that defendant Autozoners  
24 is, and at all times relevant hereto was, a limited liability company organized and existing under and  
25 by virtue of the laws of the State of Nevada and doing business in the County of Los Angeles, State  
26 of California.

27 ///

28 ///

1           4.           Plaintiff is informed and believes and based thereon allege that defendant Autozone  
2 is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of  
3 the laws of the State of Nevada and doing business in the County of Los Angeles, State of California.

4           5.           Plaintiff is informed and believes and based thereon allege that defendant Autozone  
5 West is, and at all times relevant hereto was, a limited liability company organized and existing  
6 under and by virtue of the laws of the State of Nevada and doing business in the County of Los  
7 Angeles, State of California.

8           6.           Plaintiff is informed and believes and based thereon allege that defendant Autozone  
9 Parts is, and at all times relevant hereto was, a corporation organized and existing under and by  
10 virtue of the laws of the State of Nevada and doing business in the County of Los Angeles, State of  
11 California.

12           7.           Plaintiff is informed and believes and based thereon alleges that defendant Barragan  
13 is, and at all times relevant hereto was, an individual residing in California, as well as a Regional  
14 Manager of Autozoners, Autozone, Autozone West, Autozone Parts, and DOES 1 through 100, as  
15 further defined below.

16           8.           The true names and capacities, whether individual, corporate, associate, or otherwise,  
17 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,  
18 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.  
19 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated  
20 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.  
21 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of  
22 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is  
23 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent  
24 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or  
25 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the  
26 other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall  
27 include Autozoners, Autozone, Autozone West, Autozone Parts and any of their parent, subsidiary,  
28 or affiliated companies within the State of California, as well as Barragan and DOES 1 through 100

1 identified herein.

2 **JOINT LIABILITY ALLEGATIONS**

3 9. Plaintiff is informed and believes and based thereon alleges that all the times  
4 mentioned herein, each of the Defendants was the agent, principal, employee, employer,  
5 representative, joint venture or co-conspirator of each of the other defendants, either actually or  
6 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,  
7 employment, joint venture, and conspiracy.

8 10. All of the acts and conduct described herein of each and every corporate defendant  
9 was duly authorized, ordered, and directed by the respective and collective defendant corporate  
10 employers, and the officers and management-level employees of said corporate employers. In  
11 addition thereto, said corporate employers participated in the aforementioned acts and conduct of  
12 their said employees, agents, and representatives, and each of them; and upon completion of the  
13 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant  
14 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,  
15 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the  
16 aforementioned corporate employees, agents and representatives.

17 11. As a result of the aforementioned facts, Plaintiff is informed and believes, and based  
18 thereon alleges that Defendants, and each of them, are joint employers.

19 **JURISDICTION**

20 12. Jurisdiction exists in the Superior Court of the State of California pursuant to Code  
21 of Civil Procedure section 410.10.

22 13. Venue is proper in Los Angeles County, California pursuant to Code of Civil  
23 Procedure sections 392, et seq. because, among other things, Los Angeles County is where the  
24 causes of action complained of herein arose; the county in which the employment relationship  
25 began; the county in which performance of the employment contract, or part of it, between Plaintiff  
26 and Defendants was due to be performed; and the county in which the employment contract, or part  
27 of it, between Plaintiff and Defendants was actually performed. Moreover, the unlawful acts alleged  
28 herein have a direct effect on Plaintiff and Class Members in Los Angeles County, and because

1 Defendants employ numerous Class Members in Los Angeles County.

2 **FACTUAL BACKGROUND**

3 14. For at least four (4) years prior to the filing of this action and continuing to the  
4 present, Defendants have, at times, failed to pay overtime wages to Plaintiff and Class Members, or  
5 some of them, in violation of California state wage and hour laws as a result of, without limitation,  
6 Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per week, and  
7 seven consecutive work days in a work week without being properly compensated for hours worked  
8 in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours  
9 worked on the seventh consecutive work day in a work week by, among other things, failing to  
10 accurately track and/or pay for all minutes actually worked at the proper overtime rate of pay to the  
11 detriment of Plaintiff and Class Members.

12 15. For at least four (4) years prior to the filing of this Action and continuing to the  
13 present, Defendants have, at times, failed to pay minimum wages to Plaintiff and Class Members,  
14 or some of them, in violation of California state wage and hour laws as a result of, among other  
15 things, at times, failing to accurately track and/or pay for all hours actually worked at their regular  
16 rate of pay that is above the minimum wage to the detriment of Plaintiff and Class Members.

17 16. For at least four (4) years prior to the filing of this Action and continuing to the  
18 present, Defendants have, at times, failed to provide Plaintiff and Class Members, or some of them,  
19 full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than  
20 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on  
21 which they worked in excess of ten (10) hours in a work day, and failing to provide compensation  
22 for such unprovided meal periods as required by California wage and hour laws.

23 17. For at least four (4) years prior to the filing of this action and continuing to the  
24 present, Defendants have, at times, failed to authorize and permit Plaintiff and Class Members, or  
25 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major  
26 fraction thereof and failed to provide compensation for such unprovided rest periods as required by  
27 California wage and hour laws.

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1       18.       For at least three (3) years prior to the filing of this action and continuing to the  
2 present, Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the  
3 full amount of their wages owed to them upon termination and/or resignation as required by Labor  
4 Code sections 201 and 202, including for, without limitation, failing to pay overtime wages,  
5 minimum wages, premium wages, and vacation pay pursuant to Labor Code section 227.3.

6       19.       For at least one (1) year prior to the filing of this Action and continuing to the present,  
7 Defendants have, at times, failed to furnish Plaintiff and Class Members, or some of them, with  
8 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages  
9 earned; all applicable hourly rates in effect during the pay period and the corresponding number of  
10 hours worked at each hourly rate; the name and address of the legal entity that is the employer; and  
11 other such information as required by Labor Code section 226, subdivision (a). As a result thereof,  
12 Defendants have further failed to furnish employees with an accurate calculation of gross and gross  
13 wages earned, as well as gross and net wages paid.

14       20.       For at least one (1) year prior to the filing of this action and continuing to the present,  
15 Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the full  
16 amount of their wages for labor performed in a timely fashion as required under Labor Code section  
17 204.

18       21.       For at least three (3) years prior to the filing of this action and continuing to the  
19 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the  
20 costs incurred in laundering mandatory work uniforms.

21       22.       For at least four (4) years prior to the filing of this action and continuing to the  
22 present, Defendants have had a consistent policy of failing to provide Plaintiff and similarly situated  
23 employees or former employees within the State of California with compensation at their final rate  
24 of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

25       23.       For at least four (4) years prior to the filing of this action and continuing to the  
26 present, Defendants have had a consistent policy of failing to provide Plaintiffs and similarly  
27 situated employees or former employees within the State of California with the rights provided to  
28 them under the Healthy Workplace Healthy Families Act of 2014, codified at Labor Code section

1 245, *et seq.*

2 24. Plaintiff, on their own behalf and on behalf of Class Members, brings this action  
3 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7,  
4 227.3, 245, *et seq.*, 510, 512, 1194, 1194.2, 1197, 2802, and California Code of Regulations, Title  
5 8, section 11040, seeking overtime wages, minimum wages, payment of premium wages for missed  
6 meal and rest periods, failure to pay timely wages, waiting time penalties, wage statement penalties,  
7 failure to indemnify work-related expenses, failing to pay vested vacation time at the proper rate of  
8 pay, other such provisions of California law, and reasonable attorneys' fees and costs.

9 25. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, pursuant to  
10 Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s)  
11 prohibiting Defendants from further violating the Labor Code and requiring the establishment of  
12 appropriate and effective means to prevent further violations, as well as all monies owed but  
13 withheld and retained by Defendants to which Plaintiff and Class Members are entitled, as well as  
14 restitution of amounts owed.

15 **CLASS ACTION ALLEGATIONS**

16 26. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class action  
17 pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current  
18 and former non-exempt employees of Defendants within the State of California at any time  
19 commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice  
20 of the class action is provided to the class (collectively referred to as "Class Members").

21 27. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b)  
22 to amend or modify the class description with greater specificity, further divide the defined class  
23 into subclasses, and to further specify or limit the issues for which certification is sought.

24 28. This action has been brought and may properly be maintained as a class action under  
25 the provisions of Code of Civil Procedure section 382 because there is a well-defined community  
26 of interest in the litigation and the proposed Class is easily ascertainable.

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1           A.     Numerosity

2           29.       The potential Class Members as defined are so numerous that joinder of all the  
3 members of the Class is impracticable. While the precise number of Class Members has not been  
4 determined yet, Plaintiff is informed and believes that there are over seventy-five (75) Class  
5 Members employed by Defendants within the State of California.

6           30.       Accounting for employee turnover during the relevant periods necessarily increases  
7 this number. Plaintiff alleges Defendants' employment records would provide information as to the  
8 number and location of all Class Members. Joinder of all members of the proposed Class is not  
9 practicable.

10           B.     Commonality

11           31.       There are questions of law and fact common to Class Members. These common  
12 questions include, but are not limited to:

13           A.     Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours  
14 worked at a proper overtime rate of pay?

15           B.     Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay  
16 for all other time worked at the employee's regular rate of pay and a rate of pay that  
17 is greater than the applicable minimum wage?

18           C.     Did Defendants violate Labor Code section 512 by not authorizing or permitting  
19 Class Members to take compliant meal periods?

20           D.     Did Defendants violate Labor Code section 226.7 by not providing Class Members  
21 with additional wages for missed or interrupted meal periods?

22           E.     Did Defendants violate applicable Wage Orders by not authorizing or permitting  
23 Class Members to take compliant rest periods?

24           F.     Did Defendants violate Labor Code section 226.7 by not providing Class Members  
25 with additional wages for missed rest periods?

26           G.     Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class  
27 Members upon termination or resignation all wages earned?

28     ///

1 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code  
2 section 203?

3 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing  
4 Class Members with accurate wage statements?

5 J. Did Defendants fail to pay Class Members in a timely fashion as required under  
6 Labor Code section 204?

7 K. Did Defendants fail to indemnify Class Members for all necessary expenditures or  
8 losses incurred in direct consequence of the discharge of their duties or by obedience  
9 to the directions of Defendants as required under Labor Code section 2802?

10 L. Did Defendants violate Labor Code section 227.3 by not providing Class Members  
11 with compensation at their final rate of pay for vested paid vacation time.

12 M. Did Defendants violate the Unfair Competition Law, Business and Professions Code  
13 section 17200, *et seq.*, by their unlawful practices as alleged herein?

14 N. Are Class Members entitled to restitution of wages under Business and Professions  
15 Code section 17203?

16 O. Are Class Members entitled to costs and attorneys' fees?

17 P. Are Class Members entitled to interest?

18 C. Typicality

19 32. The claims of Plaintiff herein alleged are typical of those claims which could be  
20 alleged by any Class Members, and the relief sought is typical of the relief which would be sought  
21 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and  
22 damages arising out of and caused by Defendants' common course of conduct in violation of laws  
23 and regulations that have the force and effect of law and statutes as alleged herein.

24 D. Adequacy of Representation

25 33. Plaintiff will fairly and adequately represent and protect the interest of Class  
26 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and  
27 hour class actions.

28 ///

1           E.     Superiority of Class Action

2       34.       A class action is superior to other available means for the fair and efficient  
3 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and  
4 questions of law and fact common to Class Members predominate over any questions affecting only  
5 individual Class Members. Class Members, as further described therein, have been damaged and  
6 are entitled to recovery by reason of Defendants' policies and/or practices that have resulted in the  
7 violation of the Labor Code at times, as set out herein.

8       35.       Class action treatment will allow Class Members to litigate their claims in a manner  
9 that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of  
10 any difficulties that are likely to be encountered in the management of this action that would  
11 preclude its maintenance as a class action.

12                                   **FIRST CAUSE OF ACTION**

13                   **(Failure to Pay Overtime Wages – Against All Defendants)**

14       36.       Plaintiff realleges and incorporates by reference all of the allegations contained in  
15 the preceding paragraphs as though fully set forth hereat.

16       37.       At all relevant times, Plaintiff and Class Members were employees or former  
17 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable  
18 Wage Orders.

19       38.       At all times relevant to this Complaint, Labor Code section 510 was in effect and  
20 provided: "(a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours in  
21 one workday and any work in excess of forty hours in any one workweek . . . shall be compensated  
22 at the rate of no less than one and one-half times the regular rate of pay for an employee."

23       39.       At all times relevant to this Complaint, Labor Code section 510 further provided that  
24 "[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice  
25 the regular rate of pay for an employee. In addition, any work in excess of eight hours on any  
26 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of  
27 pay."

28     ///

1 40. Four (4) years prior to the filing of the Complaint in this Action through the present,  
2 Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more  
3 than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7)  
4 consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a  
5 result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours  
6 actually worked at the proper overtime rate of pay to the detriment of Plaintiff and Class Members.

7 41. Accordingly, by requiring Plaintiff and Class Members to, at times, work greater  
8 than eight (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays  
9 without properly compensating overtime wages at the proper overtime rate of pay, Defendants, on  
10 occasion, willfully violated the provisions of the Labor Code, among others, sections 510, 1194, and  
11 applicable IWC Wage Orders, and California law.

12 42. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have  
13 been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery,  
14 plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor Code section 1194  
15 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

16 **SECOND CAUSE OF ACTION**

17 **(Failure to Pay Minimum Wages – Against All Defendants)**

18 43. Plaintiff realleges and incorporates by reference all of the allegations contained in  
19 the preceding paragraphs as though fully set forth hereat.

20 44. At all relevant times, Plaintiff and Class Members were employees or former  
21 employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage Orders.

22 45. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and  
23 Class Members were entitled to receive minimum wages for all hours worked or otherwise under  
24 Defendants' control.

25 46. For four (4) years prior to the filing of the Complaint in this Action through the  
26 present, Defendants failed, at times, to accurately track and/or pay for all hours actually worked at  
27 their regular rate of pay that is above the minimum wage to the detriment of Plaintiff and Class  
28 Members.

1 47. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have  
2 suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages  
3 for all hours worked or otherwise due.

4 48. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure  
5 sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to  
6 recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated  
7 damages, reasonable attorneys' fees and costs of suit.

8 **THIRD CAUSE OF ACTION**

9 **(Failure to Provide Meal Periods – Against All Defendants)**

10 49. Plaintiff realleges and incorporates by reference all of the allegations contained in  
11 the preceding paragraphs as though fully set forth hereat.

12 50. At all relevant times, Plaintiff and Class Members were employees or former  
13 employees of Defendants covered by Labor Code section 512 and applicable Wage Orders.

14 51. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall  
15 employ an employee for a work period of more than five (5) hours without a timely meal break of  
16 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.  
17 Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours  
18 per day without providing the employee with a second timely meal period of not less than thirty (30)  
19 minutes in which the employee is relieved of all of his or her duties.

20 52. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee  
21 with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission,  
22 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate  
23 of compensation for each workday that the meal period is not provided.

24 53. For four (4) years prior to the filing of the Complaint in this Action through the  
25 present, Plaintiff and Class Members were, at times, not provided complete, timely 30-minute, duty-  
26 free uninterrupted meal periods every five hours of work without waiving the right to take them, as  
27 permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the  
28 Class Member's regular rate of compensation on the occasions that Class Members were not

1 provided compliant meal periods.

2 54. By their failure to provide Plaintiff and Class Members compliant meal periods as  
3 contemplated by Labor Code section 512, among other California authorities, and failing, at times,  
4 to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully  
5 violated the provisions of Labor Code section 512 and applicable Wage Orders.

6 55. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have  
7 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay  
8 owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

9 56. Plaintiff and Class Members are entitled to recover the full amount of their unpaid  
10 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus  
11 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,  
12 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

13 **FOURTH CAUSE OF ACTION**

14 **(Failure to Provide Rest Periods – Against All Defendants)**

15 57. Plaintiff realleges and incorporates by reference all of the allegations contained in  
16 the preceding paragraphs as though fully set forth hereat.

17 58. At all relevant times, Plaintiff and Class Members were employees or former  
18 employees of Defendants covered by applicable Wage Orders.

19 59. California law and applicable Wage Orders require that employers "authorize and  
20 permit" employees to take ten (10) minute rest periods in about the middle of each four (4) hour  
21 work period "or major fraction thereof." Accordingly, employees who work shifts of three and-a-  
22 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who  
23 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes  
24 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided  
25 thirty (30) minutes of paid rest period.

26 60. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee  
27 with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare  
28 Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's

1 regular rate of compensation for each work day that the rest period is not provided.

2 61. For four (4) years prior to the filing of the Complaint in this Action through the  
3 present, Plaintiff and Class Members were, at times, not authorized or permitted to take complete,  
4 timely 10-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction  
5 thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class  
6 Member's regular rate of compensation on the occasions that Class Members were not authorized  
7 or permitted to take compliant rest periods.

8 62. By their failure, at times, to authorize and permit Plaintiff and Class Members to take  
9 rest periods contemplated by California law, and one (1) additional hour of pay at the employee's  
10 regular rate of compensation for such unprovided rest periods, as alleged above, Defendants  
11 willfully violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

12 63. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have  
13 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay  
14 owed for rest periods that they were not authorized or permitted to take.

15 64. Plaintiff and Class Members are entitled to recover the full amount of their unpaid  
16 additional pay for unprovided compliant rest periods, in amounts to be determined at trial, plus  
17 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,  
18 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

19 **FIFTH CAUSE OF ACTION**

20 **(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

21 65. Plaintiff realleges and incorporates by reference all of the allegations contained in  
22 the preceding paragraphs as though fully set forth hereat.

23 66. At all relevant times, Plaintiff and Class Members were employees or former  
24 employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable  
25 Wage Orders.

26 67. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were  
27 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.  
28 Discharged Class Members were entitled to payment of all wages earned and unpaid prior to

1 discharge immediately upon termination. Class Members who resigned were entitled to payment  
2 of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation  
3 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and  
4 unpaid at the time of resignation.

5 68. Plaintiff is informed and believes, and based thereon alleges, that in the three (3)  
6 years before the filing of the Complaint in this Action through the present, Defendants, due to the  
7 failure, at times, to provide overtime wages mentioned above, failed to pay Plaintiff and Class  
8 Members all wages earned prior to resignation or termination in accordance with Labor Code  
9 sections 201 or 202.

10 69. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and  
11 Class Members all wages earned prior to termination or resignation in accordance with Labor Code  
12 sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff  
13 and Class Members at the time of termination in accordance with Labor Code sections 201 and 202,  
14 but intentionally adopted policies or practices incompatible with the requirements of Labor Code  
15 sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination  
16 or resignation.

17 70. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to  
18 waiting time penalties from the date their earned and unpaid wages were due, upon termination or  
19 resignation, until paid, up to a maximum of thirty (30) days.

20 71. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have  
21 suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned  
22 prior to termination or resignation.

23 72. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections  
24 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover  
25 waiting time penalties, interest, and their costs of suit, as well.

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**SIXTH CAUSE OF ACTION**

**(Failure to Provide Accurate Wage Statements – Against All Defendants)**

73. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

74. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

75. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized statement that accurately reflects, among other things, gross wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; and the name and address of the legal entity that is the employer, among other things.

76. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year before the filing of the Complaint in this Action through the present, Defendants failed to comply with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their failure, at times, to furnish Plaintiff and Class Members with accurate itemized statements that accurately reflect, among other things, gross wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; and the name and address of the legal entity that is the employer, among other things.

77. Defendants' failure to, at times, provide Plaintiff and Class Members with accurate wage statements was knowing, intentional, and willful. Defendants had the ability to provide Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully provided wage statements that Defendants knew were not accurate.

78. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered injury. The absence of accurate information on Class Members' wage statements at times has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and mathematical computations to determine the amount of wages owed; causes difficulty and expense

1 in attempting to reconstruct time and pay records; and led to submission of inaccurate information  
2 about wages and amounts deducted from wages to state and federal governmental agencies, among  
3 other things.

4 79. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and Class Members  
5 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor  
6 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent  
7 pay period, not to exceed an aggregate \$4,000.00 per employee.

8 80. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil  
9 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to  
10 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable  
11 attorneys' fees, and costs of suit.

12 **SEVENTH CAUSE OF ACTION**

13 **(Failure to Timely Pay Wages During Employment – Against All Defendants)**

14 81. Plaintiff reallege each and every allegation set forth in the preceding paragraphs and  
15 incorporate each by reference as though fully set forth hereat.

16 82. At all relevant times, Plaintiff and Class Members were employees or former  
17 employees of Defendants covered by Labor Code section 204 and applicable Wage Orders.

18 83. Labor Code section 204 provides that “[l]abor performed between the 1<sup>st</sup> and 15<sup>th</sup>  
19 days, inclusive, of any calendar month shall be paid for between the 16<sup>th</sup> and 26<sup>th</sup> day of the month  
20 during which the labor was performed, and labor performed between the 16<sup>th</sup> and the last day,  
21 inclusive, of any calendar month, shall be paid for between the 1<sup>st</sup> and 10<sup>th</sup> day of the following  
22 month.”

23 84. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely  
24 independent and apart from, any other penalty provided in this article, every person who fails to pay  
25 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and  
26 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars  
27 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful  
28 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25

1 percent of the amount unlawfully withheld.”

2 85. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year  
3 before the filing of the Complaint in this Action through the present, Defendants employed policies  
4 and practices that resulted in, at times, not paying Plaintiff and Class Members in accordance with  
5 Labor Code section 204.

6 86. Pursuant to Labor Code section 210, Plaintiff and Class Members are entitled to  
7 recover penalties for Defendants’ violations of Labor Code section 204, in the amount of one  
8 hundred dollars (\$100) for each initial violation per Class Member, and two hundred dollars (\$200)  
9 for each subsequent violation in connection with each payment that was made in violation of Labor  
10 Code section 204 per Class Member, plus 25 percent of the amount unlawfully withheld.

11 87. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and  
12 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recovery of penalties,  
13 interest, and their costs of suit, as well.

14 **EIGHTH CAUSE OF ACTION**

15 **(Violation of Labor Code § 2802 – Against All Defendants)**

16 88. Plaintiff reallege and incorporate by reference all of the allegations contained in the  
17 preceding paragraphs as though fully set forth hereat.

18 89. At all relevant times, Plaintiff and Class Members were employees or former  
19 employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.

20 90. Labor Code section 2802, subdivision (a) provides that “an employer shall indemnify  
21 his or her employee for all necessary expenditures or losses incurred by the employee in direct  
22 consequence of the discharge of his or her duties . . .”

23 91. For three (3) years prior to the filing of the Complaint in this Action through the  
24 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,  
25 necessary expenditures or losses in direct consequence of the discharge of their duties or at the  
26 obedience to the directions of Defendants that included, without limitation: laundering mandatory  
27 work uniforms.

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1 92. During that time period, Plaintiff is informed and believes, and based thereon allege  
2 that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiff sand  
3 Class Members for those losses and/or expenditures.

4 93. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have  
5 suffered damages in an amount subject to proof, to the extent they were not reimbursed for the  
6 herein-described losses and/or expenditures.

7 94. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and  
8 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover  
9 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and  
10 costs of suit.

11 **NINTH CAUSE OF ACTION**

12 **(Violation of Labor Code § 227.3 – Against All Defendants**

13 95. Plaintiff re-alleges and incorporates by reference all of the allegations contained in  
14 the preceding paragraphs of this Complaint as though fully set forth hereon.

15 96. According to Labor Code section 227.3, whenever a contract of employment or  
16 employer policy provides for paid vacations, and an employee is terminated without having taken  
17 off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in  
18 accordance with such contract of employment or employer policy respecting eligibility or time  
19 served.

20 97. Plaintiff is informed and believes, and based thereon alleges that, at all times relevant  
21 hereto, Defendants promulgated and maintained a uniform policy providing for paid vacations, and  
22 that Plaintiff's employment contract with Defendants included paid vacations.

23 98. For at least four (4) years prior to the filing of this action and continuing to the  
24 present, Defendants have had a consistent policy of failing to provide Plaintiff and similarly situated  
25 employees or former employees within the State of California with compensation at their final rate  
26 of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

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99. As a proximate result of Defendants' failure to pay vested vacation at the final rate of Plaintiff and Class Members upon their resignation or termination, Defendants violated Labor Code section 227.3, entitling Plaintiff and Class Members to all vested and unused vacation pay at their final rate of pay, as set out in Defendants' policy or the contract of employment between Plaintiff and Class Members, on the one hand, and Defendants, on the other hand.

100. As a further proximate result of Defendants' above-described acts and/or omissions, Plaintiff and Class Members are entitled to recover reasonable attorneys' fees, costs of suit and prejudgment interest.

### TENTH CAUSE OF ACTION

**(Unfair Competition – Against All Defendants)**

11        101.        Plaintiff realleges and incorporates by reference all of the allegations contained in  
12 the preceding paragraphs as though fully set forth hereat.

102. Plaintiff is informed and believes, and based thereon alleges that the unlawful conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business and Professions Code section 17200. Due to their unlawful business practices in violation of the Labor Code, Defendants have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their obligations to compensate employees in accordance with the Labor Code.

19 103. As a result of Defendants' unfair competition as alleged herein, Plaintiff and Class  
20 Members have suffered injury in fact and lost money or property.

104. Pursuant to Business and Professions Code section 17203, Plaintiff and Class Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor Code and requiring the establishment of appropriate and effective means to prevent further violations, as well as restitution of all wages and other monies owed to them under the Labor Code, including interest thereon, in which they had a property interest and which Defendants nevertheless failed to pay them and instead withheld and retained for themselves. Restitution of the money owed to Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched by their failure to comply with the Labor Code.

1 105. Plaintiff and Class Members are entitled to costs of suit under Code of Civil  
2 Procedure section 1032 and interest under Civil Code section 3287.

3 **DEMAND FOR JURY TRIAL**

4 106. Plaintiff demands a trial by jury on all causes of action contained herein.

5 **PRAYER**

6 WHEREFORE, on behalf of Plaintiff and Class Members, Plaintiff prays for judgment  
7 against Defendants as follows:

- 8 A. An order certifying this case as a Class Action;
- 9 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's  
10 counsel as class counsel;
- 11 C. Damages for all wages earned and owed, including minimum, overtime wages and  
12 unpaid wages for vested vacation time, under Labor Code sections 510, 1194,  
13 1197, 1199 and 227.3;
- 14 D. Liquidated damages pursuant to Labor Code section 1194.2;
- 15 E. Damages for unpaid premium wages from missed meal and rest periods under,  
16 among other Labor Code sections 512 and 226.7;
- 17 F. Penalties for inaccurate wage statements under Labor Code section 226,  
18 subdivision (e);
- 19 G. Waiting time penalties under Labor Code section 203;
- 20 H. Penalties to timely pay wages under Labor Code section 210;
- 21 I. Damages under Labor Code sections 2802;
- 22 J. Preliminary and permanent injunctions prohibiting Defendants from further  
23 violating the California Labor Code and requiring the establishment of appropriate  
24 and effective means to prevent future violations;
- 25 K. Restitution of wages and benefits due which were acquired by means of any unfair  
26 business practice, according to proof;

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- L. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- M. For attorneys' fees in prosecuting this action;
- N. For costs of suit incurred herein; and
- O. For such other and further relief as the Court deems just and proper.

Dated: March 30, 2023

BIBIYAN LAW GROUP, P.C.

BY: 

DAVID D. BIBIYAN

JEFFREY D. KLEIN

JOSHUA SHIRIAN

Attorneys for Plaintiff ADRIAN RIVERO on behalf of  
himself and all others similarly situated

Exhibit 4

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Attorneys for Plaintiff, ANGEL MEN CHAN, and  
on behalf of herself and all others similarly situated

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County of Los Angeles  
4/21/2023 3:26 PM  
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Executive Officer/Clerk of Court,  
By D. Jackson Aubry, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

ANGEL MEN CHAN, an individual and on  
behalf of all others similarly situated,

Plaintiff,

v.

PANERA, LLC., a Delaware limited liability  
company; BEVERLY NGUYEN, an  
individual; and DOES 1 through 100,  
inclusive,

Defendants.

CASE NO.: **23STCV09024**

**CLASS ACTION COMPLAINT FOR:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO TIMELY PAY WAGES;
8. FAILURE TO INDEMNIFY;
9. UNFAIR COMPETITION.

**DEMAND FOR JURY TRIAL**

[Amount in Controversy Exceeds \$25,000.00]

1 Plaintiff Angel Men Chan, on behalf of herself and all others similarly situated, alleges as  
2 follows:

3 **GENERAL ALLEGATIONS**

4 **INTRODUCTION**

5 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against  
6 Panera, LLC, and any of its respective subsidiaries or affiliated companies within the State of  
7 California ("Panera"); and Beverly Nguyen ("Nguyen" and collectively, with Panera and DOES 1  
8 through 100, as further defined below, "Defendants") on behalf of Plaintiff and all other current and  
9 former non-exempt California employees employed by or formerly employed by Defendants  
10 ("Class Members").

11 **PARTIES**

12 **A. Plaintiff**

13 2. Plaintiff Angel Men Chan is a resident of the State of California. At all relevant  
14 times herein, Plaintiff is informed and believes, and based thereon alleges, that Defendants  
15 employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to,  
16 customer service. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff Angel  
17 Men Chan worked for Defendants from approximately August of 2022 through the present.

18 **B. Defendants**

19 3. Plaintiff is informed and believes and based thereon allege that defendant Panera is,  
20 and at all times relevant hereto was, a limited liability company organized and existing under and  
21 by virtue of the laws of the State of Delaware and doing business in the County of Los Angeles,  
22 State of California.

23 4. Plaintiff is informed and believes and based thereon alleges that defendant Nguyen  
24 is, and at all times relevant hereto was, an individual residing in California, as well as the Operations  
25 Manager of Panera, and DOES 1 through 100, as further defined below.

26 5. The true names and capacities, whether individual, corporate, associate, or otherwise,  
27 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,  
28 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.

1 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated  
2 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.  
3 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of  
4 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is  
5 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent  
6 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or  
7 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the  
8 other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall  
9 include Panera, and any of their parent, subsidiary, or affiliated companies within the State of  
10 California, as well as Nguyen and DOES 1 through 100 identified herein.

11 **JOINT LIABILITY ALLEGATIONS**

12 6. Plaintiff is informed and believes and based thereon alleges that all the times  
13 mentioned herein, each of the Defendants was the agent, principal, employee, employer,  
14 representative, joint venture or co-conspirator of each of the other defendants, either actually or  
15 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,  
16 employment, joint venture, and conspiracy.

17 7. All of the acts and conduct described herein of each and every corporate defendant  
18 was duly authorized, ordered, and directed by the respective and collective defendant corporate  
19 employers, and the officers and management-level employees of said corporate employers. In  
20 addition thereto, said corporate employers participated in the aforementioned acts and conduct of  
21 their said employees, agents, and representatives, and each of them; and upon completion of the  
22 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant  
23 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,  
24 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the  
25 aforementioned corporate employees, agents and representatives.

26 8. As a result of the aforementioned facts, Plaintiff is informed and believes, and based  
27 thereon alleges that Defendants, and each of them, are joint employers.

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**JURISDICTION**

9. Jurisdiction exists in the Superior Court of the State of California pursuant to Code of Civil Procedure section 410.10.

10. Venue is proper in Los Angeles County, California pursuant to Code of Civil Procedure sections 392, et seq. because, among other things, Los Angeles County is where the causes of action complained of herein arose; the county in which the employment relationship began; the county in which performance of the employment contract, or part of it, between Plaintiff and Defendants was due to be performed; and the county in which the employment contract, or part of it, between Plaintiff and Defendants was actually performed. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff and Class Members in Los Angeles County, and because Defendants employ numerous Class Members in Los Angeles County.

**FACTUAL BACKGROUND**

11. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have, at times, failed to pay overtime wages to Plaintiff and Class Members, or some of them, in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per week, and seven consecutive work days in a work week without being properly compensated for hours worked in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours worked on the seventh consecutive work day in a work week by, among other things, and failing to accurately track and/or pay for all minutes actually worked at the proper overtime rate of pay to the detriment of Plaintiff and Class Members.

12. For at least four (4) years prior to the filing of this Action and continuing to the present, Defendants have, at times, failed to pay minimum wages to Plaintiff and Class Members, or some of them, in violation of California state wage and hour laws as a result of, among other things, at times, and failing to accurately track and/or pay for all hours actually worked at their regular rate of pay that is above the minimum wage to the detriment of Plaintiff and Class Members.

13. For at least four (4) years prior to the filing of this Action and continuing to the present, Defendants have, at times, failed to provide Plaintiff and Class Members, or some of them,

1 full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than  
2 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on  
3 which they worked in excess of ten (10) hours in a work day, and failing to provide compensation  
4 for such unprovided meal periods as required by California wage and hour laws.

5 14. For at least four (4) years prior to the filing of this action and continuing to the  
6 present, Defendants have, at times, failed to authorize and permit Plaintiff and Class Members, or  
7 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major  
8 fraction thereof and failed to provide compensation for such unprovided rest periods as required by  
9 California wage and hour laws.

10 15. For at least three (3) years prior to the filing of this action and continuing to the  
11 present, Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the  
12 full amount of their wages owed to them upon termination and/or resignation as required by Labor  
13 Code sections 201 and 202, including for, without limitation, failing to pay overtime wages,  
14 minimum wages, and premium wages.

15 16. For at least one (1) year prior to the filing of this Action and continuing to the present,  
16 Defendants have, at times, failed to furnish Plaintiff and Class Members, or some of them, with  
17 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages  
18 earned; all applicable hourly rates in effect during the pay period and the corresponding number of  
19 hours worked at each hourly rate; and other such information as required by Labor Code section  
20 226, subdivision (a). As a result thereof, Defendants have further failed to furnish employees with  
21 an accurate calculation of gross and gross wages earned, as well as gross and net wages paid.

22 17. For at least one (1) year prior to the filing of this action and continuing to the present,  
23 Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the full  
24 amount of their wages for labor performed in a timely fashion as required under Labor Code section  
25 204.

26 18. For at least three (3) years prior to the filing of this action and continuing to the  
27 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the  
28 costs incurred in; laundering mandatory work uniforms.

1 19. Plaintiff, on their own behalf and on behalf of Class Members, brings this action  
2 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7,  
3 245, *et seq.*, 510, 512, 1194, 1194.2, 1197, 2802, and California Code of Regulations, Title 8, section  
4 11040, seeking overtime wages, minimum wages, payment of premium wages for missed meal and  
5 rest periods, failure to pay timely wages, waiting time penalties, wage statement penalties, failure  
6 to indemnify work-related expenses, other such provisions of California law, and reasonable  
7 attorneys' fees and costs.

8 20. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, pursuant to  
9 Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s)  
10 prohibiting Defendants from further violating the Labor Code and requiring the establishment of  
11 appropriate and effective means to prevent further violations, as well as all monies owed but  
12 withheld and retained by Defendants to which Plaintiff and Class Members are entitled, as well as  
13 restitution of amounts owed.

14 **CLASS ACTION ALLEGATIONS**

15 21. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class action  
16 pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current  
17 and former non-exempt employees of Defendants within the State of California at any time  
18 commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice  
19 of the class action is provided to the class (collectively referred to as "Class Members").

20 22. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b)  
21 to amend or modify the class description with greater specificity, further divide the defined class  
22 into subclasses, and to further specify or limit the issues for which certification is sought.

23 23. This action has been brought and may properly be maintained as a class action under  
24 the provisions of Code of Civil Procedure section 382 because there is a well-defined community  
25 of interest in the litigation and the proposed Class is easily ascertainable.

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1           A.     Numerosity

2           24.       The potential Class Members as defined are so numerous that joinder of all the  
3 members of the Class is impracticable. While the precise number of Class Members has not been  
4 determined yet, Plaintiff is informed and believes that there are over seventy-five (75) Class  
5 Members employed by Defendants within the State of California.

6           25.       Accounting for employee turnover during the relevant periods necessarily increases  
7 this number. Plaintiff alleges Defendants' employment records would provide information as to the  
8 number and location of all Class Members. Joinder of all members of the proposed Class is not  
9 practicable.

10           B.     Commonality

11           26.       There are questions of law and fact common to Class Members. These common  
12 questions include, but are not limited to:

13           A.     Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours  
14 worked at a proper overtime rate of pay?

15           B.     Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay  
16 for all other time worked at the employee's regular rate of pay and a rate of pay that  
17 is greater than the applicable minimum wage?

18           C.     Did Defendants violate Labor Code section 512 by not authorizing or permitting  
19 Class Members to take compliant meal periods?

20           D.     Did Defendants violate Labor Code section 226.7 by not providing Class Members  
21 with additional wages for missed or interrupted meal periods?

22           E.     Did Defendants violate applicable Wage Orders by not authorizing or permitting  
23 Class Members to take compliant rest periods?

24           F.     Did Defendants violate Labor Code section 226.7 by not providing Class Members  
25 with additional wages for missed rest periods?

26           G.     Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class  
27 Members upon termination or resignation all wages earned?

28     ///

- 1 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code  
2 section 203?
- 3 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing  
4 Class Members with accurate wage statements?
- 5 J. Did Defendants fail to pay Class Members in a timely fashion as required under  
6 Labor Code section 204?
- 7 K. Did Defendants fail to indemnify Class Members for all necessary expenditures or  
8 losses incurred in direct consequence of the discharge of their duties or by obedience  
9 to the directions of Defendants as required under Labor Code section 2802?
- 10 L. Did Defendants violate the Unfair Competition Law, Business and Professions Code  
11 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 12 M. Are Class Members entitled to restitution of wages under Business and Professions  
13 Code section 17203?
- 14 N. Are Class Members entitled to costs and attorneys' fees?
- 15 O. Are Class Members entitled to interest?

16 **C. Typicality**

17 27. The claims of Plaintiff herein alleged are typical of those claims which could be  
18 alleged by any Class Members, and the relief sought is typical of the relief which would be sought  
19 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and  
20 damages arising out of and caused by Defendants' common course of conduct in violation of laws  
21 and regulations that have the force and effect of law and statutes as alleged herein.

22 **D. Adequacy of Representation**

23 28. Plaintiff will fairly and adequately represent and protect the interest of Class  
24 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and  
25 hour class actions.

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1           E.     Superiority of Class Action

2           29.       A class action is superior to other available means for the fair and efficient  
3 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and  
4 questions of law and fact common to Class Members predominate over any questions affecting only  
5 individual Class Members. Class Members, as further described therein, have been damaged and  
6 are entitled to recovery by reason of Defendants' policies and/or practices that have resulted in the  
7 violation of the Labor Code at times, as set out herein.

8           30.       Class action treatment will allow Class Members to litigate their claims in a manner  
9 that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of  
10 any difficulties that are likely to be encountered in the management of this action that would  
11 preclude its maintenance as a class action.

12                                   **FIRST CAUSE OF ACTION**

13                               **(Failure to Pay Overtime Wages – Against All Defendants)**

14           31.       Plaintiff realleges and incorporates by reference all of the allegations contained in  
15 the preceding paragraphs as though fully set forth hereat.

16           32.       At all relevant times, Plaintiff and Class Members were employees or former  
17 employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable  
18 Wage Orders.

19           33.       At all times relevant to this Complaint, Labor Code section 510 was in effect and  
20 provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in  
21 one workday and any work in excess of forty hours in any one workweek . . . shall be compensated  
22 at the rate of no less than one and one-half times the regular rate of pay for an employee.”

23           34.       At all times relevant to this Complaint, Labor Code section 510 further provided that  
24 “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice  
25 the regular rate of pay for an employee. In addition, any work in excess of eight hours on any  
26 seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of  
27 pay.”

28     ///

37. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery, plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor Code section 1194 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

**(Failure to Pay Minimum Wages – Against All Defendants)**

39. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage Orders.

26 41. For four (4) years prior to the filing of the Complaint in this Action through the  
27 present, Defendants failed, at times, and to accurately track and/or pay for all hours actually worked  
28 at their regular rate of pay that is above the minimum wage to the detriment of Plaintiff and Class

Members.

42. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages for all hours worked or otherwise due.

43. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated damages, reasonable attorneys' fees and costs of suit.

### **THIRD CAUSE OF ACTION**

#### **(Failure to Provide Meal Periods – Against All Defendants)**

44. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

45. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code section 512 and applicable Wage Orders.

46. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall employ an employee for a work period of more than five (5) hours without a timely meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second timely meal period of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.

47. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

48. For four (4) years prior to the filing of the Complaint in this Action through the present, Plaintiff and Class Members were, at times, not provided complete, timely 30-minute, duty-free uninterrupted meal periods every five hours of work without waiving the right to take them, as permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the

1 Class Member's regular rate of compensation on the occasions that Class Members were not  
2 provided compliant meal periods.

3 49. By their failure to provide Plaintiff and Class Members compliant meal periods as  
4 contemplated by Labor Code section 512, among other California authorities, and failing, at times,  
5 to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully  
6 violated the provisions of Labor Code section 512 and applicable Wage Orders.

7 50. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have  
8 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay  
9 owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

10 51. Plaintiff and Class Members are entitled to recover the full amount of their unpaid  
11 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus  
12 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,  
13 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

14 **FOURTH CAUSE OF ACTION**

15 **(Failure to Provide Rest Periods – Against All Defendants)**

16 52. Plaintiff realleges and incorporates by reference all of the allegations contained in  
17 the preceding paragraphs as though fully set forth hereat.

18 53. At all relevant times, Plaintiff and Class Members were employees or former  
19 employees of Defendants covered by applicable Wage Orders.

20 54. California law and applicable Wage Orders require that employers "authorize and  
21 permit" employees to take ten (10) minute rest periods in about the middle of each four (4) hour  
22 work period "or major fraction thereof." Accordingly, employees who work shifts of three and-a-  
23 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who  
24 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes  
25 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided  
26 thirty (30) minutes of paid rest period.

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57. By their failure, at times, to authorize and permit Plaintiff and Class Members to take rest periods contemplated by California law, and one (1) additional hour of pay at the employee's regular rate of compensation for such unprovided rest periods, as alleged above, Defendants willfully violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

59. Plaintiff and Class Members are entitled to recover the full amount of their unpaid additional pay for unprovided compliant rest periods, in amounts to be determined at trial, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

**(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

61. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable Wage Orders.

62. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were entitled upon termination to timely payment of all wages earned and unpaid prior to termination. Discharged Class Members were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Class Members who resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and unpaid at the time of resignation.

63. Plaintiff is informed and believes, and based thereon alleges, that in the three (3) years before the filing of the Complaint in this Action through the present, Defendants, due to the failure, at times, to provide overtime wages mentioned above, failed to pay Plaintiff and Class Members all wages earned prior to resignation or termination in accordance with Labor Code sections 201 or 202.

64. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and Class Members all wages earned prior to termination or resignation in accordance with Labor Code sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff and Class Members at the time of termination in accordance with Labor Code sections 201 and 202, but intentionally adopted policies or practices incompatible with the requirements of Labor Code sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination or resignation.

65. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to waiting time penalties from the date their earned and unpaid wages were due, upon termination or resignation, until paid, up to a maximum of thirty (30) days.

66. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned prior to termination or resignation.

67. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover waiting time penalties, interest, and their costs of suit, as well.

**SIXTH CAUSE OF ACTION**

**(Failure to Provide Accurate Wage Statements – Against All Defendants)**

68. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

69. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

70. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized statement that accurately reflects, among other things, gross wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, among other things.

71. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year before the filing of the Complaint in this Action through the present, Defendants failed to comply with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their failure, at times, to furnish Plaintiff and Class Members with accurate itemized statements that accurately reflect, among other things, gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, among other things.

72. Defendants' failure to, at times, provide Plaintiff and Class Members with accurate wage statements was knowing, intentional, and willful. Defendants had the ability to provide Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully provided wage statements that Defendants knew were not accurate.

73. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered injury. The absence of accurate information on Class Members' wage statements at times has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and mathematical computations to determine the amount of wages owed; causes difficulty and expense in attempting to reconstruct time and pay records; and led to submission of inaccurate information about wages and amounts deducted from wages to state and federal governmental agencies, among

1 other things.

2 74. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and Class Members  
3 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor  
4 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent  
5 pay period, not to exceed an aggregate \$4,000.00 per employee.

6 75. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil  
7 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to  
8 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable  
9 attorneys' fees, and costs of suit.

10 **SEVENTH CAUSE OF ACTION**

11 **(Failure to Timely Pay Wages During Employment – Against All Defendants)**

12 76. Plaintiff reallege each and every allegation set forth in the preceding paragraphs and  
13 incorporate each by reference as though fully set forth hereat.

14 77. At all relevant times, Plaintiff and Class Members were employees or former  
15 employees of Defendants covered by Labor Code section 204 and applicable Wage Orders.

16 78. Labor Code section 204 provides that “[l]abor performed between the 1<sup>st</sup> and 15<sup>th</sup>  
17 days, inclusive, of any calendar month shall be paid for between the 16<sup>th</sup> and 26<sup>th</sup> day of the month  
18 during which the labor was performed, and labor performed between the 16<sup>th</sup> and the last day,  
19 inclusive, of any calendar month, shall be paid for between the 1<sup>st</sup> and 10<sup>th</sup> day of the following  
20 month.”

21 79. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely  
22 independent and apart from, any other penalty provided in this article, every person who fails to pay  
23 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and  
24 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars  
25 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful  
26 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25  
27 percent of the amount unlawfully withheld.”

28 ///

1 80. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year  
2 before the filing of the Complaint in this Action through the present, Defendants employed policies  
3 and practices that resulted in, at times, not paying Plaintiff and Class Members in accordance with  
4 Labor Code section 204.

5 81. Pursuant to Labor Code section 210, Plaintiff and Class Members are entitled to  
6 recover penalties for Defendants' violations of Labor Code section 204, in the amount of one  
7 hundred dollars (\$100) for each initial violation per Class Member, and two hundred dollars (\$200)  
8 for each subsequent violation in connection with each payment that was made in violation of Labor  
9 Code section 204 per Class Member, plus 25 percent of the amount unlawfully withheld.

10 82. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and  
11 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recovery of penalties,  
12 interest, and their costs of suit, as well.

13 **EIGHTH CAUSE OF ACTION**

14 **(Violation of Labor Code § 2802 – Against All Defendants)**

15 83. Plaintiff reallege and incorporate by reference all of the allegations contained in the  
16 preceding paragraphs as though fully set forth hereat.

17 84. At all relevant times, Plaintiff and Class Members were employees or former  
18 employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.

19 85. Labor Code section 2802, subdivision (a) provides that “an employer shall indemnify  
20 his or her employee for all necessary expenditures or losses incurred by the employee in direct  
21 consequence of the discharge of his or her duties . . .”

22 86. For three (3) years prior to the filing of the Complaint in this Action through the  
23 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,  
24 necessary expenditures or losses in direct consequence of the discharge of their duties or at the  
25 obedience to the directions of Defendants that included, without limitation: laundering mandatory  
26 work uniforms.

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1 87. During that time period, Plaintiff is informed and believes, and based thereon allege  
2 that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiff sand  
3 Class Members for those losses and/or expenditures.

4 88. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have  
5 suffered damages in an amount subject to proof, to the extent they were not reimbursed for the  
6 herein-described losses and/or expenditures.

7 89. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and  
8 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover  
9 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and  
10 costs of suit.

11 **NINTH CAUSE OF ACTION**

12 **(Unfair Competition – Against All Defendants)**

13 90. Plaintiff realleges and incorporates by reference all of the allegations contained in  
14 the preceding paragraphs as though fully set forth hereat.

15 91. Plaintiff is informed and believes, and based thereon alleges that the unlawful  
16 conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business  
17 and Professions Code section 17200. Due to their unlawful business practices in violation of the  
18 Labor Code, Defendants have gained a competitive advantage over other comparable companies  
19 doing business in the State of California that comply with their obligations to compensate employees  
20 in accordance with the Labor Code.

21 92. As a result of Defendants' unfair competition as alleged herein, Plaintiff and Class  
22 Members have suffered injury in fact and lost money or property.

23 93. Pursuant to Business and Professions Code section 17203, Plaintiff and Class  
24 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor  
25 Code and requiring the establishment of appropriate and effective means to prevent further  
26 violations, as well as restitution of all wages and other monies owed to them under the Labor Code,  
27 including interest thereon, in which they had a property interest and which Defendants nevertheless  
28 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed

1 to Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched  
2 by their failure to comply with the Labor Code.

3 94. Plaintiff and Class Members are entitled to costs of suit under Code of Civil  
4 Procedure section 1032 and interest under Civil Code section 3287.

5 **DEMAND FOR JURY TRIAL**

6 95. Plaintiff demands a trial by jury on all causes of action contained herein.

7 **PRAYER**

8 WHEREFORE, on behalf of Plaintiff and Class Members, Plaintiff prays for judgment  
9 against Defendants as follows:

- 10 A. An order certifying this case as a Class Action;
- 11 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's  
12 counsel as class counsel;
- 13 C. Damages for all wages earned and owed, including minimum and overtime wages,  
14 under Labor Code sections 510, 1194, 1197 and 1199;
- 15 D. Liquidated damages pursuant to Labor Code section 1194.2;
- 16 E. Damages for unpaid premium wages from missed meal and rest periods under,  
17 among other Labor Code sections, 512 and 226.7;
- 18 F. Penalties for inaccurate wage statements under Labor Code section 226,  
19 subdivision (e);
- 20 G. Waiting time penalties under Labor Code section 203;
- 21 H. Penalties to timely pay wages under Labor Code section 210;
- 22 I. Damages under Labor Code section 2802;
- 23 J. Preliminary and permanent injunctions prohibiting Defendants from further  
24 violating the California Labor Code and requiring the establishment of appropriate  
25 and effective means to prevent future violations;
- 26 K. Restitution of wages and benefits due which were acquired by means of any unfair  
27 business practice, according to proof;

28 ///

- 1 L. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- 2 M. For attorneys' fees in prosecuting this action;
- 3 N. For costs of suit incurred herein; and
- 4 O. For such other and further relief as the Court deems just and proper.

5  
6 Dated: April 21, 2023

BIBIYAN LAW GROUP, P.C.

7  
8 BY: 

9 DAVID D. BIBIYAN

JEFFREY D. KLEIN

JOSHUA SHIRIAN

10 Attorneys for Plaintiff ANGEL MEN CHAN on behalf  
11 of herself and all others similarly situated  
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Exhibit 5

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## Select A Case

**David D Bibiyan is an attorney in 50 cases.**

<a href="#">2:14-cv-01186-RSWL-RZ</a>	Maria Washburn v. Reliance Standard Life Insurance Company et al	filed 02/14/14	closed 05/09/14
<a href="#">2:14-cv-06738-PA-CW</a>	Jenny U. Garcia v. Concentra Health Services, Inc. et al	filed 08/27/14	closed 08/08/15
<a href="#">2:15-cv-09045-JFW-RAO</a>	William L. Tedstrom v. Nanthealth	filed 11/20/15	closed 03/11/16
<a href="#">2:16-cv-02232-BRO-SS</a>	Gustavo Segura Santoyo v. Consolidated Foundries Inc. et al	filed 04/01/16	closed 10/13/16
<a href="#">2:16-cv-02418-SJO-E</a>	Hannah L Tye v. Wells Fargo Capital Finance, LLC et al	filed 04/08/16	closed 02/03/17
<a href="#">2:16-cv-05821-RGK-AJW</a>	Jessica Najarro v. Chipotle Services, LLC	filed 08/04/16	closed 10/20/16
<a href="#">2:17-cv-03478</a>	Claudia Estrada v. Meridian Senior Living, LLC, et al	filed 05/08/17	closed 05/09/17
<a href="#">2:17-cv-04341-JVS-E</a>	Mariter Roldan et al v. Fresenius Medical Care North America Limited Partnership et al	filed 06/12/17	closed 07/25/17
<a href="#">2:17-cv-08645-MWF-KS</a>	Arensdorff v. Stanley Steamer International Inc et al	filed 11/30/17	closed 05/29/18
<a href="#">2:19-cv-02944-VAP-FFM</a>	Jessyka Walker v. Norred and Associates, Inc.	filed 04/16/19	closed 08/09/19
<a href="#">2:19-cv-03061-RGK-JPR</a>	Juan Ramos Cazares v. Areas USA LAX, LLC et al	filed 04/19/19	closed 08/16/19
<a href="#">2:19-cv-03920-SB-SK</a>	Amber Pardue et al v. CBC Restaurant Corp. et al	filed 05/03/19	closed 03/18/21

<a href="#">2:19-cv-10387-DMG-KS</a>	Jason Hamilton v. Michael Kors Stores California, Inc. et al	filed 12/06/19	closed 01/21/21
<a href="#">2:20-cv-05223-RGK-KS</a>	Jenny M. Luna et al v. Pronto California General Agency LLC et al	filed 06/11/20	closed 08/19/20
<a href="#">2:20-cv-06782-JWH-PLA</a>	Delvin Hines v. Constellis Integrated Risk Management Services et al	filed 07/29/20	closed 08/24/21
<a href="#">2:21-cv-03071-PSG-AS</a>	Cesar Medina v. Western Distributing Company et al	filed 04/08/21	closed 05/13/21
<a href="#">2:21-cv-04988-RSWL-KS</a>	Valentina Rosario v. American Youth Hostels, Inc., et al	filed 06/18/21	closed 05/17/22
<a href="#">2:21-cv-05980-VAP-PVC</a>	Mehrnaz Taat v. ACELL, Inc. et al	filed 07/23/21	closed 12/16/22
<a href="#">2:21-cv-06097-SVW-JPR</a>	Ronald Getaw v. Consolidated Disposal Service, L.L.C. et al	filed 07/28/21	closed 10/20/21
<a href="#">2:21-cv-08922-PA-RAO</a>	Genaro Juarez v. Calmet Services, Inc. et al	filed 11/12/21	closed 02/18/22
<a href="#">2:22-cv-02826-JLS-E</a>	Soheil Davood v. NKSFB, LLC et al	filed 04/28/22	closed 01/12/23
<a href="#">2:22-cv-04013-ODW-MAR</a>	Patricia J. Ryan v. Mission Treatment Services, Inc. et al	filed 06/10/22	closed 09/19/22
<a href="#">2:22-cv-04348-AB-JPR</a>	Asia Thompson v. La Petite Academy, Inc. et al	filed 06/24/22	closed 04/28/23
<a href="#">2:22-cv-06574</a>	Phillip Daniels et al v. TA Operating LLC et al	filed 09/14/22	closed 09/15/22
<a href="#">2:22-cv-07040-JFW-MAA</a>	Nelda Sanchez v. Vanderlande Industries, Inc. et al	filed 09/28/22	closed 10/19/22
<a href="#">2:22-cv-07128-ODW-PD</a>	Francisco Correa v. A2 Railla Development, Inc. et al	filed 09/30/22	closed 05/01/23
<a href="#">2:22-cv-07892-SB-</a>	Rene Hernandez v. Todd Pipe and Supply, LLC et al	filed 10/28/22	closed 12/15/22

<a href="#">2:22-cv-08296-JFW-JPR</a>	Caya Rodriguez v. Raising Cane's USA, L.L.C. et al	filed 11/14/22	closed 05/22/23
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<a href="#">2:23-cv-02665-FMO-MAR</a>	Zuban Isidor Navarrete v. NFI Management Services, LLC et al	filed 04/10/23	
<a href="#">2:23-cv-02802-MCS-JC</a>	Turesa Wilcox v. Harbor UCLA Medical Center Guild, Inc. et al	filed 04/14/23	
<a href="#">2:23-cv-03019-DMG-SK</a>	Michael Garcia v. United Site Services of California, Inc. et al	filed 04/21/23	
<a href="#">2:23-cv-03872-SPG-AS</a>	Adrian Rivero v. Autozoners, LLC et al	filed 05/19/23	
<a href="#">2:23-cv-04194-JLS-AFM</a>	Angel Men Chan v. Panera, LLC et al	filed 05/30/23	
<a href="#">2:23-cv-04901-WLH-AGR</a>	Mackenzie Anne Thoma v. VXN Group, LLC et al	filed 06/21/23	
<a href="#">5:19-cv-02413-JLS-KK</a>	Maribel Bolanos v. Texas Roadhouse Management Corp. et al	filed 12/16/19	closed 07/28/20
<a href="#">5:20-cv-02585-RGK-SHK</a>	Maria Delgado-Fuentes v. HCR Manorcare Medical Services of Florida, LLC et al	filed 12/16/20	closed 04/12/21
<a href="#">5:21-cv-01873-JWH-SHK</a>	Felipe Trujillo v. Morgan Truck Body, LLC et al	filed 11/04/21	closed 02/14/22
<a href="#">5:22-cv-00684-JLS-SHK</a>	Sara Torres v. Laurel Avenue, LLC et al	filed 04/21/22	closed 11/09/22
<a href="#">5:22-cv-00813-JGB-SP</a>	John Kelley v. Applus Technologies, Inc. et al	filed 05/13/22	closed 06/30/22
<a href="#">5:22-cv-01255-FWS-SP</a>	Tony Nunley v. Cardinal Logistics Management Corporation et al	filed 07/19/22	closed 10/05/22

[5:22-cv-01634-  
JGB-SHK](#)

Phillip Daniels et al v. TA Operating LLC et al

filed 09/14/22 closed 01/05/23

[5:22-cv-01811-  
HDV-SP](#)

Anita Gamarro v. Walgreen Pharmacy Services Midwest, LLC et al

filed 10/13/22

[5:23-cv-00623-  
SSS-KK](#)

Enrique Rocco v. National Distribution Centers, LLC et al

filed 04/07/23

[5:23-cv-01161-  
MEMF-PD](#)

Rogrel Maurice Washington v. Target Corporation et al

filed 06/16/23

[8:17-cv-00825-  
AG-JDE](#)

Claudia Estrada v. Meridian Senior Living, LLC, et al

filed 05/08/17 closed 06/02/17

[8:21-cv-01611-  
JLS-JDE](#)

Steven Gonzalez v. H&M Hennes & Mauritz L.P. et al

filed 09/30/21 closed 01/20/22

[8:22-cv-00266-  
CJC-ADS](#)

Silvia Alfaro v. Banter by Piercing Pagoda et al

filed 02/18/22 closed 05/23/22

[8:22-cv-00372-  
CJC-JDE](#)

Irving Carlos Zuniga v. House Foods America Corporation et al

filed 03/09/22 closed 12/15/22

[8:22-cv-00408-  
CJC-KES](#)

Paul J. Walker v. Lin R. Rogers Electrical Contractors et al

filed 03/16/22 closed 09/12/22

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Transaction Receipt			
06/28/2023 09:51:20			
PACER Login:	emkenned	Client Code:	
Description:	Search	Search Criteria:	Last Name: Bibiyan
Billable Pages:	2	Cost:	0.20

Exhibit 6

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Executive Officer/Clerk of Court,  
By D. Jackson Aubry, Deputy Clerk

Attorneys for Plaintiff, MACKENZIE ANNE THOMA and  
on behalf of herself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

MACKENZIE ANNE THOMA, a.k.a.  
KENZIE ANNE, an individual and on behalf  
of all others similarly situated,

Plaintiff,

v.

VXN GROUP LLC, a Delaware limited  
liability company; STRIKE 3 HOLDINGS,  
LLC, a Delaware limited liability company;  
GENERAL MEDIA SYSTEMS, LLC, a  
Delaware limited liability company; MIKE  
MILLER, an individual; and DOES 1  
through 100, inclusive,

Defendants.

CASE NO.: 23STCV08761

**CLASS ACTION COMPLAINT FOR:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO TIMELY PAY WAGES;
8. FAILURE TO INDEMNIFY;
9. VIOLATION OF LABOR CODE § 227.3
10. UNFAIR COMPETITION.

**DEMAND FOR JURY TRIAL**

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff MACKENZIE ANNE THOMA, famously known as “KENZIE ANNE” on behalf of herself and all others similarly situated, and alleges as follows:

**INTRODUCTION**

1. This is a Class Action brought pursuant to Code of Civil Procedure section 382. It’s brought by Plaintiff MACKENZIE ANNE THOMA, known in the adult film industry as “KENZIE ANNE” (hereinafter “Plaintiff” or “Ms. Thoma”). It is brought against VXN GROUP LLC, (“VXN GROUP”), STRIKE 3 HOLDINGS, LLC (“STRIKE 3”), GENERAL MEDIA SYSTEMS, LLC (“GENERAL MEDIA”) and VXN GROUP’s Executive Director, MIKE MILLER (collectively, “Vixen Media Group”).

2. As further set out below, Vixen Media Group runs a powerful, lucrative, and well-known adult film production company which many, if not all, adult film performers perform for at some point in their careers due to its unique role in providing upscale adult film products in the industry.

3. Vixen Media Group requires its performers and models to enter into “performance agreements” in order to perform services on their behalf. Ms. Thoma had to sign one such agreement. That agreement requires that she appear nude and semi-nude and perform “multiple, explicit sexual acts” with or without sexual aids. Vixen Media Group reserves the right to choose the performer(s) and the performer(s) must perform at the direction of Vixen Media Group’s director. The hours include nights, weekends, and holidays, with filming sessions that may take as long as ten hours. During the term of the agreement, Ms. Thoma must “maintain” her “physical appearance”, including Vixen Media Group’s “reasonable personal grooming requests”. If she wanted to change her physical appearance, including, for instance, obtaining a tattoo or piercing, she first needed Vixen Media Group’s written permission. Even after the Agreement expired Ms. Thoma was required to provide additional services if Vixen Media Group required them. She must agree to promote Vixen Media Group’s websites and brands on her social media to the best of her abilities, at Vixen Media Group’s direction, and under their guidelines and recommendations.

4. Moreover, when Ms. Thoma merely requested her personnel file from Vixen Media Group, Vixen Media Group threatened to sue Ms. Thoma due to purported losses in connection with

1 two medical infections, one of which it alleges were caused by an “unauthorized plastic surgery”  
2 (all allegations that Ms. Thoma denies).

3 5. Yet despite exercising control over every aspect of Ms. Thoma’s body, including with  
4 whom she has sexual intercourse, whether she may pierce her ear, obtain a cosmetic surgery, or  
5 even miss time for an infection, Vixen Media Group contends that it lacks sufficient control over  
6 Ms. Thoma to be her employer and thus decline to provide Ms. Thoma with the pay and benefits  
7 afforded to California employees.

8 6. Thus, Ms. Thoma brings this class action on behalf of herself and all others with  
9 deemed to be “independent contractors” of VXN GROUP, STRIKE 3, GENERAL MEDIA, their  
10 respective parents, subsidiaries and/or affiliated companies within the State of California (“VIXEN  
11 MEDIA GROUP”). The Action is brought against VXN GROUP’s Executive Producer, MIKE  
12 MILLER (“MILLER”). Herein, VIXEN MEDIA GROUP, MILLER, and DOES 1 through 100, as  
13 further defined below, shall be referred to as “Defendants”.

14 **PARTIES**

15 **A. Plaintiff**

16 7. Plaintiff Ms. Thoma, a resident of the State of California, is a decorated and well-  
17 known adult film actress who performs under the stage name “Kenzie Anne”. She has been named  
18 “Pet of the Year” by Penthouse magazine and shortly before the filing of this Complaint appeared  
19 on the cover of Hustler magazine.

20 8. Before beginning her acting career, she modeled and participated in photo shoots for  
21 various clothing brands and adult magazines, such as Wet Seal, Free People, Carbon38, Playboy  
22 Plus, and Eats Channel. In November of 2020, she signed a contract with Defendants, known widely  
23 as “Vixen Media Group”, with her entry into the adult film industry occurring on or around April  
24 30, 2021. Between November 2020 through approximately September of 2022, Ms. Thoma  
25 performed in Defendants’ movies and modeled at their direction.

26 **B. Defendants**

27 9. Plaintiff is informed and believes that defendants VXN GROUP, STRIKE 3, and  
28 GENERAL MEDIA are limited liability companies organized and existing under the laws of the

1 State of Delaware and doing business in the County of Los Angeles, State of California.

2 10. VIXEN MEDIA GROUP is the creator of adult motion pictures and photographs  
3 distributed for commercial sale through various distribution outlets and platforms. It was founded  
4 in 2014 by French entrepreneur and director Greg Lansky along with partners Steven Matthyssen  
5 and Mike Miller with the goal of creating higher-quality videos that would be considered more  
6 “artistic” than the normal realm of adult video content. While Greg Lansky sold his stake in VIXEN  
7 MEDIA GROUP in January of 2020, it still owns and operates at least seven online adult film sites,  
8 including Vixen, Tushy, Blacked, Blacked Raw, Tushy Raw, Deeper and Slayed.

9 11. VIXEN MEDIA GROUP has won many major awards in the adult-film industry,  
10 including an XBIZ Award as recently in 2022 for Studio of the Year.

11 12. Plaintiff is informed and believes and based thereon alleges that defendant MILLER  
12 is, and at all times relevant hereto was, an individual residing in California, as well as a founder,  
13 principal, and the Executive Producer of VXN GROUP, and DOES 1 through 50, as further defined  
14 below. Plaintiff is further informed and believes and based thereon alleges that MILLER violated,  
15 or caused to be violated, the above-referenced and below-referenced Labor Code provisions in  
16 violation of Labor Code section 558.1.

17 13. The true names and capacities, whether individual, corporate, associate, or otherwise,  
18 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,  
19 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.  
20 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated  
21 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.  
22 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of  
23 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is  
24 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent  
25 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or  
26 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the  
27 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall  
28 include VXN GROUP, STRIKE 3, GENERAL MEDIA, MILLER and any of their parent,

1 subsidiary, or affiliated companies within the State of California, as well as DOES 1 through 50  
2 identified herein.

3 **JOINT LIABILITY ALLEGATIONS**

4 14. Plaintiff is informed and believes and based thereon alleges that all the times  
5 mentioned herein, each of the Defendants was the agent, principal, employee, employer,  
6 representative, joint venture or co-conspirator of each of the other defendants, either actually or  
7 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,  
8 employment, joint venture, and conspiracy.

9 15. All of the acts and conduct described herein of each and every corporate defendant  
10 was duly authorized, ordered, and directed by the respective and collective defendant corporate  
11 employers, and the officers and management-level employees of said corporate employers. In  
12 addition thereto, said corporate employers participated in the aforementioned acts and conduct of  
13 their said employees, agents, and representatives, and each of them; and upon completion of the  
14 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant  
15 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,  
16 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the  
17 aforementioned corporate employees, agents and representatives.

18 16. Plaintiff is further informed and believes and based thereon alleges that MILLER  
19 violated, or caused to be violated, the above-referenced and below-referenced Labor Code  
20 provisions in violation of Labor Code section 558.1.

21 17. Plaintiff is informed and believes, and based thereon alleges, that there exists such a  
22 unity of interest and ownership between Defendants, and each of them, that their individuality and  
23 separateness have ceased to exist.

24 18. Plaintiff is informed and believes, and based thereon alleges that despite the  
25 formation of the purported corporate existence of VXXN GROUP, STRIKE 3, GENERAL MEDIA,  
26 and DOES 1 through 50, inclusive (the "Alter Ego Defendants"), they, and each of them, are one  
27 and the same with MILLER and DOES 51 through 100 ("Individual Defendants"), and each of them,  
28 due to, but not limited to, the following reasons:

- 1           A. The Alter Ego Defendants are completely dominated and controlled by the Individual  
2           Defendants who personally committed the wrongful and illegal acts and violated the  
3           laws as set forth in this Complaint, and who has hidden and currently hide behind the  
4           Alter Ego Defendants to perpetrate frauds, circumvent statutes, or accomplish some  
5           other wrongful or inequitable purpose;
- 6           B. The Individual Defendants derive actual and significant monetary benefits by and  
7           through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego  
8           Defendants as the funding source for the Individual Defendants' own personal  
9           expenditures;
- 10          C. Plaintiff is informed and believes and thereon alleges that the Individual Defendants  
11          and the Alter Ego Defendants, while really one and the same, were segregated to  
12          appear as though separate and distinct for purposes of perpetrating a fraud,  
13          circumventing a statute, or accomplishing some other wrongful or inequitable  
14          purpose;
- 15          D. Plaintiff is informed and believes and thereon alleges that the business affairs of the  
16          Individual Defendants and the Alter Ego Defendants are, and at all relevant times  
17          mentioned herein were, so mixed and intermingled that the same cannot reasonably  
18          be segregated, and the same are inextricable confusion. The Alter Ego Defendants  
19          are, and at all relevant times mentioned herein were, used by the Individual  
20          Defendants as mere shells and conduits for the conduct of certain of their, and each  
21          of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned  
22          herein were, the alter egos of the Individual Defendants;
- 23          E. The recognition of the separate existence of the Individual Defendants and the Alter  
24          Ego Defendants would promote injustice insofar that it would permit defendants to  
25          insulate themselves from liability to Plaintiff for violations of the Civil Code, Labor  
26          Code, and other statutory violations. The corporate existence of these defendants  
27          should thus be disregarded in equity and for the ends of justice because such  
28          disregard is necessary to avoid fraud and injustice to Plaintiff herein;

1 F. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual  
2 Defendants (and vice versa), and the fiction of their separate corporate existence  
3 must be disregarded;

4 19. As a result of the aforementioned facts, Plaintiff is informed and believes, and based  
5 thereon alleges that Defendants, and each of them, are joint employers.

6 **JURISDICTION**

7 20. Jurisdiction exists in the Superior Court of the State of California pursuant to Code  
8 of Civil Procedure section 410.10.

9 21. Venue is proper in Los Angeles County, California pursuant to Code of Civil  
10 Procedure sections 392, et seq. because, among other things, Los Angeles County is where the  
11 causes of action complained of herein arose; the county in which the employment relationship  
12 began; the county in which performance of the employment contract, or part of it, between Plaintiff,  
13 or some of them, and Defendants was due to be performed; the county in which the employment  
14 contract, or part of it, between Plaintiff, or some of them, and Defendants was actually performed;  
15 and the county in which Defendants, or some of them, reside. Moreover, the unlawful acts alleged  
16 herein have a direct effect on Plaintiff and Class Members in Los Angeles County, and because  
17 Defendants employ numerous Class Members in Los Angeles County.

18 **FACTUAL BACKGROUND**

19 22. For at least four (4) years prior to the filing of this action and continuing to the  
20 present, Defendants have, at times, failed to pay overtime wages to Plaintiff and Class Members, or  
21 some of them, in violation of California state wage and hour laws as a result of, without limitation,  
22 Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per week, and  
23 seven consecutive work days in a work week without being properly compensated for hours worked  
24 in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours  
25 worked on the seventh consecutive work day in a work week by, among other things, failing to  
26 accurately track and/or pay for all minutes actually worked at the proper overtime rate of pay to the  
27 detriment of Plaintiff and Class Members.

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1       23.       For at least four (4) years prior to the filing of this Action and continuing to the  
2 present, Defendants have, at times, failed to pay minimum wages to Plaintiff and Class Members,  
3 or some of them, in violation of California state wage and hour laws as a result of, among other  
4 things, at times, failing to accurately track and/or pay for all hours actually worked at their regular  
5 rate of pay that is above the minimum wage to the detriment of Plaintiff and Class Members.

6       24.       For at least four (4) years prior to the filing of this Action and continuing to the  
7 present, Defendants have, at times, failed to provide Plaintiff and Class Members, or some of them,  
8 full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than  
9 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on  
10 which they worked in excess of ten (10) hours in a work day, and failing to provide compensation  
11 for such unprovided meal periods as required by California wage and hour laws.

12       25.       For at least four (4) years prior to the filing of this action and continuing to the  
13 present, Defendants have, at times, failed to authorize and permit Plaintiff and Class Members, or  
14 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major  
15 fraction thereof and failed to provide compensation for such unprovided rest periods as required by  
16 California wage and hour laws.

17       26.       For at least three (3) years prior to the filing of this action and continuing to the  
18 present, Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the  
19 full amount of their wages owed to them upon termination and/or resignation as required by Labor  
20 Code sections 201 and 202, including for, without limitation, failing to pay overtime wages,  
21 minimum wages, premium wages, and vacation pay pursuant to Labor Code section 227.3.

22       27.       For at least one (1) year prior to the filing of this Action and continuing to the present,  
23 Defendants have, at times, failed to furnish Plaintiff and Class Members, or some of them, with  
24 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages  
25 earned; all applicable hourly rates in effect during the pay period and the corresponding number of  
26 hours worked at each hourly rate; and other such information as required by Labor Code section  
27 226, subdivision (a). As a result thereof, Defendants have further failed to furnish employees with  
28 an accurate calculation of gross and gross wages earned, as well as gross and net wages paid.

1       28.       For at least one (1) year prior to the filing of this action and continuing to the present,  
2 Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the full  
3 amount of their wages for labor performed in a timely fashion as required under Labor Code section  
4 204.

5       29.       For at least three (3) years prior to the filing of this action and continuing to the  
6 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for work-  
7 related expenses.

8       30.       For at least four (4) years prior to the filing of this action and continuing to the  
9 present, Defendants have had a consistent policy of failing to provide Plaintiff and similarly situated  
10 employees or former employees within the State of California with compensation at their final rate  
11 of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

12       31.       Plaintiff, on their own behalf and on behalf of Class Members, brings this action  
13 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7,  
14 226.8, 227.3, 404, 510, 512, 558.1, 1194, 1194.2, 1197, 2802, *et al.*, and California Code of  
15 Regulations, Title 8, section 11040, seeking overtime wages, minimum wages, payment of premium  
16 wages for missed meal and rest periods, failure to pay timely wages, waiting time penalties, wage  
17 statement penalties, failure to indemnify work-related expenses, failure to pay interest on failing to  
18 pay vested vacation time at the proper rate of pay, other such provisions of California law, and  
19 reasonable attorneys' fees and costs.

20       32.       Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, pursuant to  
21 Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s)  
22 prohibiting Defendants from further violating the Labor Code and requiring the establishment of  
23 appropriate and effective means to prevent further violations, as well as all monies owed but  
24 withheld and retained by Defendants to which Plaintiff and Class Members are entitled, as well as  
25 restitution of amounts owed.

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**CLASS ACTION ALLEGATIONS**

33. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current and former non-exempt employees of Defendants within the State of California at any time commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice of the class action is provided to the class (collectively referred to as "Class Members").

34. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b) to amend or modify the class description with greater specificity, further divide the defined class into subclasses, and to further specify or limit the issues for which certification is sought.

35. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

**A. Numerosity**

36. The potential Class Members as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined yet, Plaintiff is informed and believes that there are over seventy-five (75) Class Members employed by Defendants within the State of California.

37. Accounting for employee turnover during the relevant periods necessarily increases this number. Plaintiff alleges Defendants' employment records would provide information as to the number and location of all Class Members. Joinder of all members of the proposed Class is not practicable.

**B. Commonality**

38. There are questions of law and fact common to Class Members. These common questions include, but are not limited to:

- A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours worked at a proper overtime rate of pay?

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- 1 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay  
2 for all other time worked at the employee's regular rate of pay and a rate of pay that  
3 is greater than the applicable minimum wage?
- 4 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting  
5 Class Members to take compliant meal periods?
- 6 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members  
7 with additional wages for missed or interrupted meal periods?
- 8 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting  
9 Class Members to take compliant rest periods?
- 10 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members  
11 with additional wages for missed rest periods?
- 12 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class  
13 Members upon termination or resignation all wages earned?
- 14 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code  
15 section 203?
- 16 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing  
17 Class Members with accurate wage statements?
- 18 J. Did Defendants violate Labor Code section 226.8 by willfully classifying Class  
19 Members as independent contractors?
- 20 K. Did Defendants fail to pay Class Members in a timely fashion as required under  
21 Labor Code section 204?
- 22 L. Did Defendants fail to indemnify Class Members for all necessary expenditures or  
23 losses incurred in direct consequence of the discharge of their duties or by obedience  
24 to the directions of Defendants as required under Labor Code section 2802?
- 25 M. Did Defendants fail to return deposits made by Class Members with accrued interest  
26 thereon as required under Labor Code section 404?
- 27 N. Did Defendants violate Labor Code section 227.3 by not providing Class Members  
28 with compensation at their final rate of pay for vested paid vacation time.

1 O. Did Defendants violate the Unfair Competition Law, Business and Professions Code  
2 section 17200, *et seq.*, by their unlawful practices as alleged herein?

3 P. Are Class Members entitled to restitution of wages under Business and Professions  
4 Code section 17203?

5 Q. Are Class Members entitled to costs and attorneys' fees?

6 R. Are Class Members entitled to interest?

7 **C. Typicality**

8 39. The claims of Plaintiff herein alleged are typical of those claims which could be  
9 alleged by any Class Members, and the relief sought is typical of the relief which would be sought  
10 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and  
11 damages arising out of and caused by Defendants' common course of conduct in violation of laws  
12 and regulations that have the force and effect of law and statutes as alleged herein.

13 **D. Adequacy of Representation**

14 40. Plaintiff will fairly and adequately represent and protect the interest of Class  
15 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and  
16 hour class actions.

17 **E. Superiority of Class Action**

18 41. A class action is superior to other available means for the fair and efficient  
19 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and  
20 questions of law and fact common to Class Members predominate over any questions affecting only  
21 individual Class Members. Class Members, as further described therein, have been damaged and  
22 are entitled to recovery by reason of Defendants' policies and/or practices that have resulted in the  
23 violation of the Labor Code at times, as set out herein.

24 42. Class action treatment will allow Class Members to litigate their claims in a manner  
25 that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of  
26 any difficulties that are likely to be encountered in the management of this action that would  
27 preclude its maintenance as a class action.

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**FIRST CAUSE OF ACTION**

**(Failure to Pay Overtime Wages – Against All Defendants)**

43. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

44. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable Wage Orders.

45. At all times relevant to this Complaint, Labor Code section 510 was in effect and provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of forty hours in any one workweek . . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”

46. At all times relevant to this Complaint, Labor Code section 510 further provided that “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay.”

47. Four (4) years prior to the filing of the Complaint in this Action through the present, Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7) consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a result of, including but not limited to, Defendants failing to accurately track and/or pay for all hours actually worked at the proper overtime rate of pay to the detriment of Plaintiff and Class Members.

48. Accordingly, by requiring Plaintiff and Class Members to, at times, work greater than eight (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays without properly compensating overtime wages at the proper overtime rate of pay, Defendants, on occasion, willfully violated the provisions of the Labor Code, among others, sections 510, 1194, and applicable IWC Wage Orders, and California law.

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49. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery, plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor Code section 1194 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

## SECOND CAUSE OF ACTION

**(Failure to Pay Minimum Wages – Against All Defendants)**

50. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

51. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage Orders.

52. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and Class Members were entitled to receive minimum wages for all hours worked or otherwise under Defendants' control.

53. For four (4) years prior to the filing of the Complaint in this Action through the present, Defendants failed, at times, to accurately track and/or pay for all hours actually worked at their regular rate of pay that is above the minimum wage to the detriment of Plaintiff and Class Members.

54. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages for all hours worked or otherwise due.

55. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated damages, reasonable attorneys' fees and costs of suit.

### THIRD CAUSE OF ACTION

**(Failure to Provide Meal Periods – Against All Defendants)**

56. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

1       57.       At all relevant times, Plaintiff and Class Members were employees or former  
2 employees of Defendants covered by Labor Code section 512 and applicable Wage Orders.

3       58.       Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall  
4 employ an employee for a work period of more than five (5) hours without a timely meal break of  
5 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.  
6 Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours  
7 per day without providing the employee with a second timely meal period of not less than thirty (30)  
8 minutes in which the employee is relieved of all of his or her duties.

9       59.       Pursuant to Labor Code section 226.7, if an employer fails to provide an employee  
10 with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission,  
11 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate  
12 of compensation for each workday that the meal period is not provided.

13       60.       For four (4) years prior to the filing of the Complaint in this Action through the  
14 present, Plaintiff and Class Members were, at times, not provided complete, timely 30-minute, duty-  
15 free uninterrupted meal periods every five hours of work without waiving the right to take them, as  
16 permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the  
17 Class Member's regular rate of compensation on the occasions that Class Members were not  
18 provided compliant meal periods.

19       61.       By their failure to provide Plaintiff and Class Members compliant meal periods as  
20 contemplated by Labor Code section 512, among other California authorities, and failing, at times,  
21 to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully  
22 violated the provisions of Labor Code section 512 and applicable Wage Orders.

23       62.       As a result of Defendants' unlawful conduct, Plaintiff and Class Members have  
24 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay  
25 owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

26       63.       Plaintiff and Class Members are entitled to recover the full amount of their unpaid  
27 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus  
28 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,

1 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

2 **FOURTH CAUSE OF ACTION**

3 **(Failure to Provide Rest Periods – Against All Defendants)**

4 64. Plaintiff realleges and incorporates by reference all of the allegations contained in  
5 the preceding paragraphs as though fully set forth hereat.

6 65. At all relevant times, Plaintiff and Class Members were employees or former  
7 employees of Defendants covered by applicable Wage Orders.

8 66. California law and applicable Wage Orders require that employers “authorize and  
9 permit” employees to take ten (10) minute rest periods in about the middle of each four (4) hour  
10 work period “or major fraction thereof.” Accordingly, employees who work shifts of three and-a-  
11 half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who  
12 work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes  
13 of paid rest period, and employees who work shifts of more than ten (10) hours must be provided  
14 thirty (30) minutes of paid rest period.

15 67. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee  
16 with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare  
17 Commission, the employer shall pay the employee one (1) additional hour of pay at the employee’s  
18 regular rate of compensation for each work day that the rest period is not provided.

19 68. For four (4) years prior to the filing of the Complaint in this Action through the  
20 present, Plaintiff and Class Members were, at times, not authorized or permitted to take complete,  
21 timely 10-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction  
22 thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class  
23 Member’s regular rate of compensation on the occasions that Class Members were not authorized  
24 or permitted to take compliant rest periods.

25 69. By their failure, at times, to authorize and permit Plaintiff and Class Members to take  
26 rest periods contemplated by California law, and one (1) additional hour of pay at the employee’s  
27 regular rate of compensation for such unprovided rest periods, as alleged above, Defendants  
28 willfully violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

1       70.       As a result of Defendants' unlawful conduct, Plaintiff and Class Members have  
2 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay  
3 owed for rest periods that they were not authorized or permitted to take.

4       71.       Plaintiff and Class Members are entitled to recover the full amount of their unpaid  
5 additional pay for unprovided compliant rest periods, in amounts to be determined at trial, plus  
6 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,  
7 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

8                                   **FIFTH CAUSE OF ACTION**

9                   **(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

10       72.       Plaintiff realleges and incorporates by reference all of the allegations contained in  
11 the preceding paragraphs as though fully set forth hereat.

12       73.       At all relevant times, Plaintiff and Class Members were employees or former  
13 employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable  
14 Wage Orders.

15       74.       Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were  
16 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.  
17 Discharged Class Members were entitled to payment of all wages earned and unpaid prior to  
18 discharge immediately upon termination. Class Members who resigned were entitled to payment  
19 of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation  
20 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and  
21 unpaid at the time of resignation.

22       75.       Plaintiff is informed and believes, and based thereon alleges, that in the three (3)  
23 years before the filing of the Complaint in this Action through the present, Defendants, due to the  
24 failure, at times, to provide overtime wages mentioned above, failed to pay Plaintiff and Class  
25 Members all wages earned prior to resignation or termination in accordance with Labor Code  
26 sections 201 or 202.

27       ///

28       ///

1 76. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and  
2 Class Members all wages earned prior to termination or resignation in accordance with Labor Code  
3 sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff  
4 and Class Members at the time of termination in accordance with Labor Code sections 201 and 202,  
5 but intentionally adopted policies or practices incompatible with the requirements of Labor Code  
6 sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination  
7 or resignation.

8 77. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to  
9 waiting time penalties from the date their earned and unpaid wages were due, upon termination or  
10 resignation, until paid, up to a maximum of thirty (30) days.

11 78. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have  
12 suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned  
13 prior to termination or resignation.

14 79. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections  
15 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover  
16 waiting time penalties, interest, and their costs of suit, as well.

17 **SIXTH CAUSE OF ACTION**

18 **(Failure to Provide Accurate Wage Statements – Against All Defendants)**

19 80. Plaintiff realleges and incorporates by reference all of the allegations contained in  
20 the preceding paragraphs as though fully set forth hereat.

21 81. At all relevant times, Plaintiff and Class Members were employees or former  
22 employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

23 82. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members  
24 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized  
25 statement that accurately reflects, among other things, gross wages earned; total hours worked; net  
26 wages earned; all applicable hourly rates in effect during the pay period and the corresponding  
27 number of hours worked at each hourly rate; and the name and address of the legal entity that is the  
28 employer; among other things.

1       83.       Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year  
2 before the filing of the Complaint in this Action through the present, Defendants failed to comply  
3 with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted in their  
4 failure, at times, to furnish Plaintiff and Class Members with accurate itemized statements that  
5 accurately reflect, among other things, gross wages earned; total hours worked; net wages earned;  
6 all applicable hourly rates in effect during the pay period and the corresponding number of hours  
7 worked at each hourly rate; and the name and address of the legal entity that is the employer; among  
8 other things.

9       84.       Defendants' failure to, at times, provide Plaintiff and Class Members with accurate  
10 wage statements was knowing, intentional, and willful. Defendants had the ability to provide  
11 Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully  
12 provided wage statements that Defendants knew were not accurate.

13       85.       As a result of Defendants' unlawful conduct, Plaintiff and Class Members have  
14 suffered injury. The absence of accurate information on Class Members' wage statements at times  
15 has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and  
16 mathematical computations to determine the amount of wages owed; causes difficulty and expense  
17 in attempting to reconstruct time and pay records; and led to submission of inaccurate information  
18 about wages and amounts deducted from wages to state and federal governmental agencies, among  
19 other things.

20       86.       Pursuant to Labor Code section 226, subdivision (e), Plaintiff and Class Members  
21 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor  
22 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent  
23 pay period, not to exceed an aggregate \$4,000.00 per employee.

24       87.       Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil  
25 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to  
26 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable  
27 attorneys' fees, and costs of suit.

28       ///

**SEVENTH CAUSE OF ACTION**

**(Failure to Timely Pay Wages During Employment – Against All Defendants)**

88. Plaintiff realleges each and every allegation set forth in the preceding paragraphs and incorporate each by reference as though fully set forth hereat.

89. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code section 204 and applicable Wage Orders.

90. Labor Code section 204 provides that “[l]abor performed between the 1<sup>st</sup> and 15<sup>th</sup> days, inclusive, of any calendar month shall be paid for between the 16<sup>th</sup> and 26<sup>th</sup> day of the month during which the labor was performed, and labor performed between the 16<sup>th</sup> and the last day, inclusive, of any calendar month, shall be paid for between the 1<sup>st</sup> and 10<sup>th</sup> day of the following month.”

91. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

92. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year before the filing of the Complaint in this Action through the present, Defendants employed policies and practices that resulted in, at times, not paying Plaintiff and Class Members in accordance with Labor Code section 204.

93. Pursuant to Labor Code section 210, Plaintiff and Class Members are entitled to recover penalties for Defendants’ violations of Labor Code section 204, in the amount of one hundred dollars (\$100) for each initial violation per Class Member, and two hundred dollars (\$200) for each subsequent violation in connection with each payment that was made in violation of Labor Code section 204 per Class Member, plus 25 percent of the amount unlawfully withheld.

///

1 94. Pursuant to Labor Code section 218.6, Code of Civil Procedure sections 1021.5 and  
2 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recovery of penalties,  
3 interest, and their costs of suit, as well.

4 **EIGHTH CAUSE OF ACTION**

5 **(Violation of Labor Code § 2802 – Against All Defendants)**

6 95. Plaintiff realleges and incorporate by reference all of the allegations contained in the  
7 preceding paragraphs as though fully set forth hereat.

8 96. At all relevant times, Plaintiff and Class Members were employees or former  
9 employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.

10 97. Labor Code section 2802, subdivision (a) provides that “an employer shall indemnify  
11 his or her employee for all necessary expenditures or losses incurred by the employee in direct  
12 consequence of the discharge of his or her duties . . .”

13 98. For three (3) years prior to the filing of the Complaint in this Action through the  
14 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,  
15 necessary expenditures or losses in direct consequence of the discharge of their duties or at the  
16 obedience to the directions of Defendants that included, without limitation: laundering mandatory  
17 work uniforms; using cellular phones for work-related purposes; and purchasing tools necessary to  
18 perform work duties.

19 99. During that time period, Plaintiff is informed and believes, and based thereon alleges  
20 that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiff and Class  
21 Members for those losses and/or expenditures.

22 100. As a result of Defendants’ unlawful conduct, Plaintiff and Class Members have  
23 suffered damages in an amount subject to proof, to the extent they were not reimbursed for the  
24 herein-described losses and/or expenditures.

25 101. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and  
26 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover  
27 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys’ fees and  
28 costs of suit.

**NINTH CAUSE OF ACTION**

**(Violation of Labor Code § 227.3 – Against All Defendants)**

102. Plaintiff re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereon.

103. According to Labor Code section 227.3, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served.

104. Plaintiff is informed and believes, and based thereon alleges that, at all times relevant hereto, Defendants promulgated and maintained a uniform policy providing for paid vacations, and that Plaintiff's employment contract with Defendants included paid vacations.

105. For at least four (4) years prior to the filing of this action and continuing to the present, Defendants have had a consistent policy of failing to provide Plaintiff and similarly situated employees or former employees within the State of California with compensation at their final rate of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

106. As a proximate result of Defendants' failure to pay vested vacation at the final rate of Plaintiff and Class Members upon their resignation or termination, Defendants violated Labor Code section 227.3, entitling Plaintiff and Class Members to all vested and unused vacation pay at their final rate of pay, as set out in Defendants' policy or the contract of employment between Plaintiff and Class Members, on the one hand, and Defendants, on the other hand.

107. As a further proximate result of Defendants' above-described acts and/or omissions, Plaintiff and Class Members are entitled to recover reasonable attorneys' fees, costs of suit and prejudgment interest.

**TENTH CAUSE OF ACTION**

**(Unfair Competition – Against All Defendants)**

108. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

1 109. Plaintiff is informed and believes, and based thereon alleges that the unlawful  
2 conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business  
3 and Professions Code section 17200. Due to their unlawful business practices in violation of the  
4 Labor Code, Defendants have gained a competitive advantage over other comparable companies  
5 doing business in the State of California that comply with their obligations to compensate employees  
6 in accordance with the Labor Code.

7 110. As a result of Defendants' unfair competition as alleged herein, Plaintiff and Class  
8 Members have suffered injury in fact and lost money or property.

9 111. Pursuant to Business and Professions Code section 17203, Plaintiff and Class  
10 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor  
11 Code and requiring the establishment of appropriate and effective means to prevent further  
12 violations, as well as restitution of all wages and other monies owed to them under the Labor Code,  
13 including interest thereon, in which they had a property interest and which Defendants nevertheless  
14 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed  
15 to Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched  
16 by their failure to comply with the Labor Code.

17 112. Plaintiff and Class Members are entitled to costs of suit under Code of Civil  
18 Procedure section 1032 and interest under Civil Code section 3287.

19 **DEMAND FOR JURY TRIAL**

20 113. Plaintiff demands a trial by jury on all causes of action contained herein.

21 **PRAYER**

22 WHEREFORE, on behalf of Plaintiff and Class Members, Plaintiff prays for judgment  
23 against Defendants as follows:

- 24 A. An order certifying this case as a Class Action;
- 25 B. An Order appointing Plaintiff as Class representative and appointing Plaintiff's  
26 counsel as class counsel;
- 27 C. Damages for all wages earned and owed, including minimum. overtime wages and  
28 unpaid wages for vested vacation time, under Labor Code sections 510, 558.1,

1 1194, 1197 and 1199 and 227.3;

2 D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;

3 E. Damages for unpaid premium wages from missed meal and rest periods under,  
4 among other Labor Code sections, 512, 558.1 and 226.7;

5 F. Penalties for inaccurate wage statements under Labor Code sections 226,  
6 subdivision (e) and 558.1;

7 G. Waiting time penalties under Labor Code sections 203 and 558.1;

8 H. Penalties to timely pay wages under Labor Code section 210;

9 I. Penalties for willfully misclassifying employees as independent contractors under  
10 Labor Code 226.8

11 I. Damages under Labor Code sections 2802 and 558.1;

12 J. Damages under Labor Code section 404;

13 K. Preliminary and permanent injunctions prohibiting Defendants from further  
14 violating the California Labor Code and requiring the establishment of appropriate  
15 and effective means to prevent future violations;

16 L. Restitution of wages and benefits due which were acquired by means of any unfair  
17 business practice, according to proof;

18 M. Prejudgment and post-judgment interest at the maximum rate allowed by law;

19 N. For attorneys' fees in prosecuting this action;

20 O. For costs of suit incurred herein; and

21 P. For such other and further relief as the Court deems just and proper.

22 Dated: April 14, 2023

BIBIYAN LAW GROUP, P.C.

23  
24 BY: /s/ David D. Bibiyan

25 DAVID D. BIBIYAN

26 JEFFREY D. KLEIN

SARAH H. COHEN

27 Attorneys for Plaintiff MACKENZIE ANNE  
28 THOMA on behalf of herself and all others similarly  
situated